

WESTERN STATE COLLEGE OF LAW
CONSTITUTIONAL LAW II – Spring 2020
SYLLABUS AND COURSE POLICIES

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Office hours:

Tuesday: 9:00 – 10:15 AM; 12:30 – 4:00 PM and Thursday 9:00 – 10:15 AM for all students by appointment.

and

Immediately before class for students in that class only. These pre-class office hours are first come, first served and in the assigned classroom. Questions can also be submitted via email.

I will be available for office hours by appointment. Please make appointments in the book outside the faculty offices on the 2nd floor. Please do not contact me to schedule appointments. If you have scheduled an appointment and need to cancel, please call them as soon as possible. Other students may be waiting for appointments and may be able to take your slot. You may make telephone appointments, if you cannot make scheduled office hours.

Texts

Required Text: Chemerinsky, Constitutional Law, (5th Edition 2017).

Required Text: Chemerinsky, Constitutional Law Principles & Policies (5th Ed. 2015) or (6th Ed. 2019) (hornbook) See note below.

There is a required course webpage available at <https://lawschool.lexisnexis.com> then search for Lexis Classroom and our course. Please join and review the course webpage before the first day of class since there may be assignments due before that date in addition to the readings. You will need a passcode to access the course. The passcode is: **KPAAX7**

The required textbook is to be brought to all classes; the hornbook is at your election. The reading assignments listed in a later section of the syllabus refer to the Chemerinsky casebook in blue; pages in yellow are the corresponding pages in the Chemerinsky hornbook. You may choose to buy the hornbook or read it in the library, as you prefer. The Library has a number of copies of the hornbook on reserve. Whatever method you choose for using the hornbook, you absolutely need to read and be responsible for the pages in the hornbook as well as the casebook. This is very important, as not all materials will be discussed in class. You are required to read, watch, and do all required assignments before class, in addition to the casebook reading. Additional assignments and handouts may be assigned at the professor's election.

You are also responsible for checking the course webpage and doing assignments online in the time allotted. Online assignments have deadlines for completion. Once assignment and submission deadlines have passed, you will not be able to submit or access those materials.

Important information for this class

This class is structured differently from most other law school classes in several respects; it calls on you, the student, to be responsible for different things, for different parts of your learning, and for different activities both in class and outside. Much of our class time will be spent discussing problems assigned on the course webpage. You are to work through and write short and long answers (as instructed in each assignment online) to those problems before class; we will discuss them and solutions to them in class. This is how you will learn to apply the cases and materials to act like a lawyer and solve concrete Constitutional law problems and issues.

I have assigned not only cases from the Chemerinsky casebook, but also sections from his hornbook that explain the area (see description above and page assignments below). I also may have videos or other outside materials in the course webpage that are required and will explain basic concepts and legal doctrine. All of that material is your responsibility to have completed before coming to class, so that in-class time will be spent on working through problems and deciding how to spot issues, use cases like a constitutional lawyer would and make appropriate arguments and solutions to concrete problems.

The cases and your detailed knowledge of them are crucial to this enterprise and to your success in this course. However, cases are tools to be used to solve problems and make arguments; they are not ends or outputs themselves. Accordingly, much of your work and learning will take place out of the classroom with materials created by experts, so we can use our in-class time together to focus on things on which you may need a teacher to work with you.

Course Coverage

The purpose of the course is to explore the nature and extent of individual liberties within the federal constitutional structure. We will cover such topics as Fundamental liberties under the Due Process and Equal Protection provisions of the constitution. We will also consider the First Amendment protections of Freedom of Speech and Religion.

Examinations and Grading

Each student will receive a numeric grade for the course based on the following scale: 4.0 - 0.0. Course grades will be based on the final examination and successful completion of other exercises that may possibly be given throughout the semester.

Written Exercises: There may be mandatory, graded, written exercises and/or exams throughout the semester. Failure to satisfactorily complete all these assignments will result in a lowering of your final course grade by 0.3 – 0.4 depending on the original grade. For example, if your grade would ordinarily have been 3.3 in the course, you will receive a 3.0; if your grade would have been a 2.7, you will receive a 2.3.

Midterm and Final Exam: The midterm will count as 25% of your final course grade. Format and date to be announced.

The three-hour final examination will count 75% of the course grade. The final exam will consist of a multiple-choice section that counts for 25% of the course grade, and an essay section that counts for 50% of the course grade.

Class Participation: Normally, class participation will not count towards the overall course grade. However, consistent lack of preparation over the semester may result in a reduction of up to 10% of the overall course grade.

Copies of my previous examinations will be available on the course web page. Students are encouraged to take practice examinations. I will be happy to review practice examinations in my office during office hours by appointment.

Attendance and Participation

Legal Education is a cooperative venture. My commitment to you is to be as prepared as possible for every class session, to have read and thought about the material in advance of the class, and to participate fully in the classroom. I expect no less of you than I do of myself. I do not expect you to know the answer to every question; I do expect that you will use your best efforts.

Class preparation varies by student. However, normal expectations are that a student will prepare outside of class for 2 hours for every in-class hour.

A seating chart will be distributed at the beginning of the first class. Please print your name legibly in the seat you choose for your permanent seat. If you wish to change your seat, please notify me so that the seating chart can be adjusted accordingly.

I strongly encourage you to choose a seat near the front of the classroom. Educational studies show that students sitting near the front benefit most from the classroom experience. Because all students will be required to participate, your seat choice will not enhance or reduce the likelihood of your being chosen to recite in class. Because I make every effort to learn the names of each student in my classes, your choice of seat will not assure you of anonymity either.

Classes begin promptly at the scheduled time. Please be in your seat for the start of class. Students who arrive late disrupt the learning process for others. If you are

unavoidably late, please enter quietly through the rear entrance and take your assigned seat.

Attendance and participation are required for all classes. There are no excused or unexcused absences. In accordance with the WSU student handbook, if you miss more than four (4) daytime classes or two (2) nighttime classes, you will be academically dismissed from the course. Additionally, if you arrive late or depart early without permission, you may be marked absent for the entire session.

Disability Services Statement:

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

Reading Assignments

<u>TOPIC</u>	<u>PAGES</u> All pages in yellow are for the main text. Students should also read the corresponding pages (in blue) in the hornbook, and any supplemental material, if assigned. Pages in parentheses are recommended, not required)
Fundamental Liberties: privacy, reproductive and medical autonomy, sexual autonomy, other liberties	Casebook: 949-957, 967-981, 993-996, 1002-1014, (1014-1023), 1023-1041, 1057-1058, 1060-1065, 1069-1082, (1082-1084), 1084-1099 Hornbook: 569-571, 825-891
Freedom of Speech: Introduction and preliminary issues	1235-1237, (1237-1242), 1242-1251, 1254-1255, 1265-1283. Vagueness/overbreadth: 1283-1290, prior restraint: 1290-1302, 1310-1321. Compelled speech: 1324-1331. 965-1022
Content-based restrictions	1351-1352, (1352-1372), 1372-1376, 1385-1399, 1411-1412, 1417-1419, 1422-1455, 1464-1480, 1487-1493, 1496-1499. 1036-1040, 1047-1050, 1052-1062, 1071-1082, 1086-1096, 1144-1154, 1158-1166
Symbolic communication	1538-1549. 1117-1123
Content-neutral restrictions	1588-1597, 1612-1617, 1629-1635. 1185-1210
Other issues in speech	Schools: 1643-1661. 1216-1220 Other: 1668-1673, 1674-1690. 1221-1222, 1224-1225, 1227-1230
Freedom of religion: introduction and preliminary issues	1721-1723, (1723-1724), 1724-1731. 1247-1258
Free Exercise	1731-1740, (1740-1745), 1746-1748 . Read <i>Trinity Lutheran Church (2017)</i> available online 1315-1316, (1321-1326), 1326-1332
Establishment	(1759-1764), 1764-1805, 1806-1827 (1259-1264), 1265-1281, 1283-1295
MIDTERMS:	Cumulative from beginning of semester to that point in the course.
FINAL EXAM:	Cumulative from beginning of semester.

The following are explicit goals and objectives for this course:

Doctrinal Knowledge

Students will demonstrate knowledge of the substantive law of Constitutional Law 2, including the 14th and 5th Amendment doctrines of Equal Protection and Due Process, the 1st Amendment's guarantees of free speech and freedom of religion.

Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

Practice Skills

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.