

**WESTERN STATE COLLEGE OF LAW
CONSTITUTIONAL LAW I – Fall 2020
SYLLABUS AND COURSE POLICIES**

Professor Todd Brower
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Office hours:

Office Hours via Zoom meeting room. Please sign up at least 12 hours in advance so that I can open the Zoom room at the correct time. Make appointments via google doc located at:

https://drive.google.com/file/d/18KC2ewTFQb-wCwT6WeFrF0Hkghd6_k1_/view?usp=sharing

Contracts 1 students: Monday: 12:00 – 2:00 PM; 5:15 – 7:00 PM

Constitutional Law 1 students: Thursday: 2:00 – 6:00 PM

Available for questions by email: tbrower@wsulaw.edu

Texts and course webpage

Required Text: *Chemmerinsky, Constitutional Law, (6th Edition 2019) (casebook).*

Required Text: *Chemmerinsky, Constitutional Law Principles & Policies (6th Edition 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. You will need a passcode to access the course. The passcode is “M38PM3”.*

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 Chemmerinsky casebook in blue; pages in pink are the corresponding pages in the Chemmerinsky hornbook (6th Edition) or in yellow (older Hornbook 5th Edition). The Library has a number of copies of the hornbook on reserve You may choose to buy the hornbook or read it via the library or elsewhere, as you prefer. You may read the earlier, 5th edition of the hornbook. If so, you should update the sections that have changed.

I very strongly suggest that you read the sections in the hornbook before you read the casebook, but that choice is up to you. Whatever method you choose for using the hornbook, you absolutely need to read and to be responsible for the pages in the hornbook as well as the casebook. It is very important to do all the reading, 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.

Preparation and work for class is normally expected to be at least two hours of out of class work for every hour we spend in class. This includes not only the required reading, but also the assignments, quizzes, and material found on the course webpage.

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.

Because this class is entirely online, you are responsible for making your best efforts to learn the material from the Hornbook and materials posted online. Lectures and similar learning will primarily take place offline. Therefore, 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 on things that need to be done in real time, like doing problems and deciding how to spot issues, using cases like a constitutional lawyer would and making 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 and Objectives

The purpose of the course is to explore the constitutional structure of the federal government and state governments within the federal constitutional structure. We will cover such topics as Judicial power, Congressional power and Executive power, and the interaction of those branches with state governmental powers. We will also consider the Fourteenth Amendment protections of Equal Protection, and the State Action doctrine. Please also see the class, and WSCL objectives listed at a later section of this document.

Examinations and Grading

Each student will receive a numeric grade for the course. Course grades will be based on possible midterms, the final examination, and on successful completion of other exercises and class participation throughout the semester.

There are several graded assignments, midterms, quizzes and a final exam in this course. They are described below. **Note: You have a quiz online due before the first day of class.**

Course Webpage: There is a required course webpage. To access it, go to <https://lawschool.lexisnexis.com> then search for Lexis Classroom and our course. You will need a passcode to access the course. *The passcode is "M38PM3". You will need to sign up for the course webpage and access the course webpage to take that online quiz.*

The dates of supplemental lectures and assignments, if any, will be determined throughout the semester. They will be announced on the course webpage.

Midterms: There will be graded assignments and a possible midterm in this course. Formats to be announced later. The combined graded assignments/midterm scores will count as 25% of your final course grade.

Comprehension Checks/Quizzes: Part of the graded assignments are required comprehension checks/assignments/quizzes that will be available online. You must complete/access these assignments in the time allotted. **The first such assignment is a Pass-Fail quiz on the text of the Constitution and Amendments - Casebook pp. xxxiv-lv. The quiz is available online on the**

course webpage beginning on August 6, 2020 at 12:00 AM and is due online at 11:59 pm on August 19, 2020 before the first class.

Final Exam: The three-hour final examination will count 75% of the course grade. The final exam may consist of a multiple-choice section and an essay section. Format and further details will be available on the course webpage as they are decided.

Class Participation: Class participation is part of the overall course grade along with the non-class time components of the class, e.g., the Comprehension Checks/Quizzes, etc.

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

Office Hours

I will be available for office hours by appointment via Zoom room at the times listed at the beginning of this syllabus. Please make appointments via the instructions there and do not contact me to schedule appointments. If you have scheduled an appointment and need to cancel, please cancel in the Google doc as soon as possible. Other students may be waiting for appointments and may be able to take your slot.

Participation: Attendance and Zoom Protocols

Online classes begin promptly at the scheduled time. *There is a separate instruction document that has the online protocols for participation, for cam and microphone usage, etc.* That document is located on our course webpage via the Announcements. Ensure that you have read it and understand the protocols for this class. Please be in the zoom room and ready for the start of class. Students who arrive late disrupt the learning process for others and for me since I need to specifically let you into the zoom classroom.

Attendance and participation are required for all classes. There are no excused or unexcused absences. **In accordance with the WSCL student handbook, if you miss more than two (2) weekly classes or four (4) biweekly 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.

Participation: Expectations

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.

Because this class is online, a significant share of the participation burden is on you, the student. We will use the course website, casebook, PowerPoint, zoom tools, and other materials in class and you need access to them all as we discuss them. While I will strongly participate in helping your learning, the bulk of that responsibility is yours. Success in Constitutional Law will not come from being a passive absorber of knowledge, but only from active engagement with the material, cases and problems.

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. 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 and Class Preparation Assignments: TOPIC and PAGES

All pages are for the text and hornbook. Pages in parentheses are recommended, not required. Please read the entire block of material before the first class in that block. The casebook's materials are arranged in rough chronological order; we will not necessarily be discussing cases in that way. Therefore, it is important to have done all the reading so you can participate fully.

For the first class you have two assignments:

1. The quiz on the constitution described below;
2. The first set of case readings on judicial power and limitations also listed below. Read the entire block of materials for the first class.

The Constitution, Articles I - VII, and Amendments:

Pass-Fail quiz on the text of the Constitution and Amendments - Casebook pp. xxxiv-iv. The quiz is available online on the course webpage beginning on August 6, 2020 at 12:00 AM and is due online at 11:59 PM on August 19, 2020 before the first class. The quiz is online on the course webpage located at <https://www.lexisnexis.com/lawschool/> - then search for Lexis Classroom and our course. You will need a passcode to access the course. The passcode is *The passcode is "M38PM3"*. You will need to sign up for the course webpage and access the course webpage in order to take that online quiz.

There are also mandatory comprehension checks/quizzes about the cases in the assignment that we will discuss for each week. Before class starts on Thursday of each week, you must upload your answers to those questions online in the designated area of the course webpage when the assignment requires it. You should also bring a copy of your answers to class for that week since you will need them as references for the class discussion of those cases. If your assignment for that week does not require you to turn it in online, you will just need to bring a copy of your answers to class for that week. Your participation grade for this class is based in part on your answers.

Congressional Power and Limitations. The Commerce Clause and Federalism:
Casebook: 119-132; 155; 187-204; (159-167) 167-181; 206-216 (include Pierce County v. Guillen)
Hornbook (6th): 248-262; 273-290
Hornbook (5th): 240-254; 264-278

Congressional Power and Limitations:

Casebook: 183-187; 216-240
Hornbook (6th): 344-349, 290-292, 298-299
Hornbook (5th): 282-284; 287-290;

Congressional Power and Limitations, Section 5 of the XIV Amendment - Eleventh Amendment and Sovereign Immunity:

Casebook: 248-263

Hornbook (6th): 307-308, 313-320

Hornbook (5th): 298-310.

Plus lecture on the Eleventh Amendment and sovereign immunity,

Reading Assignment: Hornbook (6th): 202-205, 207-225

Hornbook (5th): 196-198; 200-218; 224-238.

Judicial Power and Limitations, including Standing:

Casebook: 1-13, 32-52, 58-87

Hornbook (6th): 39-54, 61-111, 112-136

Hornbook (5th): 37-50; 58-107; 107-132

Executive Power and Limitations:

Casebook: 275-291; 343-350; 359-369; 395-417

Hornbook (6th): 363-370, 386-399

Hornbook (5th): 351-357; 372-380

State Powers & Federalism

Preemption, Dormant Commerce Clause, Article IV Privileges & Immunities:

Casebook: 419-422; 429-430; 435; 444-446; 457-461; 471-475; 465-480; 461-464; 468-471; 480-489; 489-501

Hornbook (6th): 428-459, 462-467, 471-497, 510-519

Hornbook (5th): 410-440; 443-448; 452-478; 490-499.

Civil Rights and Individual Liberties: Structure:

Casebook: 503-504; 522-523 (533-530) 531; 532-544; 552-553; 561-566; 568-571

Hornbook (6th): 539-553, 553-559

Hornbook (5th): 518-532; 532-558.

Equal Protection: Rational Basis review:

Casebook: 683-711

Hornbook (6th): 724-744

Hornbook (5th): 695-717.

Equal Protection: Race:

Casebook: 711-712 (713-717) 717-728; (728-732) 732-741; 752-758; 790-791; 825-832

Hornbook (6th): 747-748, 751-776, 793-808

Hornbook (5th): 719-720; 724-748; 764-779

Equal Protection: Gender:

Casebook: 836-850; 854-876

Hornbook (6th): 813, 818-819, 821-831

Hornbook (5th): 783; 788-789; 791-800.

Equal Protection: Other Classifications:

Casebook: 895-901

Hornbook (6th): (831-846), 846-854

Hornbook (5th): (800-815); 815-823.

MIDTERM (to be determined): 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 1, including the powers of the federal government and its branches, state powers and their limitations, and the 14th and 5th Amendment Equal Protection doctrines and principles.

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.