

**WESTERN STATE COLLEGE OF LAW
CONSTITUTIONAL LAW II – Spring 2023
SYLLABUS AND COURSE POLICIES**

Professor Todd Brower
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Zoom classroom information

Although class will be in person, we will also have a zoom room open so we can record the class, take attendance, and use the chat function to respond and ask questions during class. Accordingly, this is the zoom room information for our weekly class meeting. Please sign on and be ready before class begins so that I can take attendance and we can begin and end the class on time.

<https://zoom.us/j/96760537552?pwd=T0ZsbFJLNW81MVEyMFU2cW5LMFhsZz09>
Meeting ID: 967 6053 7552
Passcode: 108601

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://docs.google.com/document/d/1D2jHvgNVg5bkUSr64fZTbYF0i-mg8aSa/edit?usp=sharing&oid=108408663156566046454&rtopf=true&sd=true>

Constitutional Law 2 students: Monday: 3:00 – 7:00 PM

Zoom office hours information

<https://zoom.us/j/94029408889?pwd=MmJyZExaMjFOWG4vSVlvN0Z2dW5Fdz09>
Meeting ID: 940 2940 8889
Passcode: 418415
One tap mobile
+16699006833,,94029408889#,,,,*418415# US (San Jose)

Alternatives to office hours

I will also be monitoring and participating in the discussions in the discussion threads on the course website.

Available for questions by email: tbrower@wsulaw.edu

Texts and course webpage

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

Required Text: *Brower, Recent Case Supplement (2023).*

Required Text: *Chemerinsky, 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 “RNFYTA”. Make sure that you sign up for the correct section when you register online. There is a section for the day class and another for the evening class.*

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

The required textbook and, when relevant, the Supreme Court opinions in the 2023 Recent Case Supplement are 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 (6th edition) in yellow**; pages in pink are cases contained in the Recent Case Supplement (2023) located for download in the Modules tab of this webcourse; pages in blue are the corresponding pages in the **Chemerinsky hornbook (6th 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.

Constitutional law changes quickly as the Supreme Court makes new, important decisions every year. There are already significant changes from the 2019 edition of the casebook and hornbook. Therefore, we have the 2023 Recent Case Supplement with edited versions of recent Court opinions that have changed the law as presented in the casebook and hornbook.

I very strongly suggest that you read the sections in the hornbook before you read the casebook. It will not only help you understand the cases, but it will assist you in understanding the bigger picture into which the cases fit. 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 and the Recent Case Supplement. 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. Some of our time in the online discussion forums will be spent discussing problems assigned on the course webpage. You are to work through and write short or long answers (as instructed in each assignment online) to those problems before class; we will discuss them and solutions to them in class or online as appropriate. 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.

You are responsible for making your best efforts to learn the material from the Hornbook and materials posted online. Basic doctrine 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.

Finally, the cases and your detailed knowledge of the facts and reasoning within them are crucial to this enterprise and to your success in this course. This knowledge is true to a much greater degree than in your other courses because in Constitutional law the primary sources for law and arguments are the US Supreme Court's opinions. There is basically little else. 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 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. Course grades will be based on the final examination and on successful completion of other exercises and class participation throughout the semester.

There are several graded and ungraded assignments, comprehension checks/practice essay exams and a closed-book/closed-notes graded final exam in this course. They are described below.

Comprehension Checks/Practice Essay Exams (5%): Part of the graded assignments are Pass/Fail practice essay exams/comprehension checks that will be available online. The practice exams are just that – practice. There are six (6) total exams throughout the semester; numbers 1-5 are graded Pass/Fail and the 6th is ungraded to be discussed in class. The final date for submission of your Pass/Fail graded answer is the final day of classes, May 2nd, 2023.

The exams increase in difficulty so that the 6th exam is at the same level as an actual final exam question. They are sample questions for you to use to both test your understanding of the recent material, and to work on writing and analysis of the particular topics that we have covered to that point in the course. These practice exams are Pass/Fail; completion of an exam will give you the passing score.

Since these six exams are for your benefit, there will be a sample answer that shows up for each exam throughout the semester. You can then compare your answer with the sample and see how your responses were similar and different. These are not model answers because they may be several different ways to resolve the issue and/or cases to use in your analysis. Successful (passing) completion of the five graded practice exams/comprehension checks will be worth 5% of the final grade.

Final Exam (80%): The three-hour final examination will count 80% of the course grade. The final exam will 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.

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 during office hours.

In- and Out-of-Class Participation (15%): In-class participation is part of the overall course grade along with the non-class time components of the class: the discussion threads, etc. All those components combined will constitute 10% of the final grade.

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 during office hours.

Participation: Attendance

Classes begin promptly at the scheduled time. Please be in the room and ready for the start of class. Students who arrive late disrupt the learning process for others and for me.

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 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 an advanced class, a significant share of the participation burden is on you, the student. We will use the course website, casebook, PowerPoint, online 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, case supplement, 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. This is not a history course; this is a course for soon-to-be practicing attorneys. Instead, we will be discussing cases in the order that a lawyer would use them to solve a problem or plan a case. Therefore, it is important to have done all the reading so you can participate fully.*

For the first class you have one assignment. It must be completed before you come to class on the first day:

1. The first set of case readings on Fundamental Liberties 1: privacy, sexual autonomy, etc. Read the entire block of materials for the first class. We will talk more about reading assignments, the Recent Case Supplement, and Comprehension checks in that first class.

TOPIC	PAGES All pages in yellow are for the main text. Cases in Pink are located in the Course Supplement 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 1: privacy, sexual autonomy, other liberties	Casebook: 903-908, 950-961, 942-945, 1030-1042, 909-911, 915-929, Hornbook: 591-593, 855-924
Fundamental Liberties 2: reproductive and medical autonomy, other liberties	1015-1028, (1028-1030), (961-970), 970-987, 1003-1004, 1006-1011 Dobbs v. Jackson Women's Health,
Freedom of Speech: Introduction, basic principles and preliminary issues – 1	1177-1179, (1179-1184), 1184-1187, 1194-1202, 1210-1211, Government subsidized or own speech: 1215-1223. Shurtleff v. Boston. 1001-1018, 1023-1025, 1074-1076
Freedom of Speech: Introduction, basic principles and preliminary issues - 2	Vagueness/Overbreadth: 1229-1237, Prior restraint: 1237-1249, 1257-1266. 1025-1044, 1048-1052

Content-based restrictions - 1	1308-1309, (1310-1328), 1328-1332, 1341-1355, 1076-1079, (1079-1087), 1087-1102, 1105-1106)
Content-based restrictions - 2	1365, 1368-1372, 1376-1383, 1211-1215, 1383-1391, 1391-1402. 1108-1118, 1018-1020, 1118-1125, 1127-1138
Content-based restrictions - 3	1419-1426, 1434-1440, 1442-1443. 1186-1197, 1201-1202
Symbolic communication	1481-1491. 1159-1165
Content-neutral restrictions & Location	1531-1540, 1554-1559, 1570-1575. 1228-1256
Other issues in speech - 1: Schools	Schools: 1582-1597. Mahanoy Area Sch. Dist. v. B.L. 1261-1266
Other issues in speech - 2: Compelled Speech, Freedom of Association	Other: and compelled speech decisions Compelled speech: 1270-1272 + 303 creative supplement , Freedom of Association: (1605-1609), 1625-1635. 1266-1269, 1272-1276
Freedom of religion: introduction and preliminary issues	1665-1667, (1667-1667), 1668-1675. 1294-1304
Free Exercise	1675-1690, Fulton v. Philadelphia; Roman Catholic Diocese v. Cuomo; Tandon v. Newsome, 1700, and Carson v. Makin 1362-1365, (1366-1367), 1368-1377, (1381-1384)
Establishment	(1717-1722), (1723-1728), 1737-1740 (1747-1752), 1753-1762, Kennedy v. Bremerton School District, 1782-1790. (1305-1312), 1313-1314, (1315-1316), 1319-1324, 1329-1334, 1339-1342, 1344-1345
MIDTERMS (if given):	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 freedom of speech and religion under the 1st and 14th Amendments, , and the 14th and 5th Amendment Equal Protection and Due Process 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.