CONSTITUTIONAL LAW: FALL 2014
MONTEREY COLLEGE OF LAW

Professor Ellen Campos

Syllabus: First Semester

I. Introduction

This is a one-year, six-unit course in Constitutional Law. The United States Constitution and its 27 Amendments comprise the essential body of law that determines the structure of the United States Government, and the relationship of the states and individuals to that government. Understanding the subject matter is essential to the Bar Exam (essay and multi-state) and to the practice of law. Please be aware that this course will be difficult and will require much more time than most of your other courses. The concepts we will study in this class relate to every other course studied in law school, and significantly affect our lives and communities. Constitutional law is the one subject matter that can be found on the news and in popular discourse every day of your professional career.

II. Text and Materials

Required reading:
- Historical background: Read one of the two books listed below before the first class:
  - Collier and Collier, Decision in Philadelphia (Ballantine Books)
  - Carol Berkin, A Brilliant Solution (Harcourt, Inc.)
- Additional cases may be assigned throughout the semester. Citations and/or links will be provided.

Highly recommended:

Optional:

III. Attendance, Reading Assignments and Classroom Participation

The Monterey College of Law attendance policy and the Committee of Bar Examiners require regular and punctual attendance at class. Roll will be taken at the beginning of class and after the break, if necessary. Be aware that according to the MCL attendance policy, students missing two class sessions are required to make an appointment with the Dean to discuss their absences. Students with more than three absences a semester are subject to dismissal from this course. Such students may not continue to attend classes, or take the midterm or final examination in that course, without approval of the Dean.

If you must miss class, it is your responsibility to obtain the materials, notes and assignments from that class. It is inevitable that assignments will be changed, important announcements will be made, and material will be emphasized in class that is important to you. You will be responsible to be aware of everything covered in class. Check the class website often: any important class announcements or changes in the syllabus, as well as other class materials will be posted there throughout the week.

Unless the syllabus indicates otherwise, you are required to read the text, notes and cases assigned in the casebook and the corresponding supplement pages. Unlike other classes you take in law school, Constitutional Law changes every year because the law changes every year. New cases can reverse pre-existing law, or modify last year’s understanding in dramatic ways. Any new cases not included in the casebook or supplement, as well as other required reading material, will be made available to you through the class website.

Class meetings are an essential aspect of the course. You are expected to be fully prepared by reading each assignment prior to class, and to participate in class discussions and other in-class assignments. Class participation is not optional.

While laptops are allowed in class, use of the internet during this class is strictly prohibited unless legal research is necessary for class discussion. A violation of this rule may be considered a violation of the student honor code.
IV. Grading and Examinations

For the one-year Constitutional Law course, your final grade will be based 1/3 on the grade issued for the fall semester, and 2/3 on the grade issued for the spring semester. The final examination at the end of the spring semester will include all cases and topics covered during the entire year since Constitutional Law builds upon itself and certain concepts are applicable throughout the entire course. Emphasis will be on your ability to analyze and apply the law to the facts.

Your grade for the fall semester will be based on the mid-term examination at the end of the semester and on "class participation," which includes in-class discussion as well as completion of additional short oral or written assignments that will be required throughout the semester. Class participation will be used to adjust grades upwards for each student; unusually good class participation may result in your grade being raised from 1 to 5 points. Good class participation distinguishes itself not by the quantity of the participation, but by the student’s insightful and timely contribution to advancing the class discussion, and thoughtful and timely completion of written or oral assignments.

Reading Assignments: Below is an optimistic schedule of reading assignments. You are responsible to brief the cases named below and be prepared to discuss in class. Cases not specifically named but included within the reading material should be skimmed and will be covered primarily by lecture; they are also included in the reading in the hornbook. Other cases may be designated in this syllabus to skim as well.

<table>
<thead>
<tr>
<th>Week</th>
<th>Subjects</th>
<th>Reading</th>
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| Class #1 August 19 | • Overview of class  
• Nature and structure of the Constitution  
• Structure of the U.S. Supreme Court and federal court system  
• Early Constitutional history  
**Chapter 1: Federal Judicial Power**  
• Authority for Judicial Review  
  ➢ *Marbury v. Madison* |  
Nature and Structure of the Constitution  
1. Read the entire Constitution: Casebook, pp. xli-lvii  
Structure of the U.S. Supreme Court and the federal court system  
2. Review the official website for the Supreme Court of the United States (SCOTUS), [http://www.supremecourtus.gov/](http://www.supremecourtus.gov/), in particular review the biographies for the Supreme Court Justices  
Early Constitutional history  
4. Read one of the following books on the history of the Constitution: *Decision in Philadelphia or A Brilliant Solution* (required)  
Judicial Review  
5. Casebook: pp. 1-9  
(also to be discussed in more detail during Class #2)  
<table>
<thead>
<tr>
<th>Class #2</th>
<th>Chapter 1: Federal Judicial Power continued</th>
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| August 26 | - Marbury v. Madison cont.  
| | - Authority for judicial review of state judgments  
| | | Martin v. Hunter’s Lessee  
| | - Limits on Federal Judicial Power  
| | | o Interpretative limits [2nd Amendment]  
| | | | D.C. v. Heller  
| | | o Congressional limits  
| | | | Exceptions and Regulations Clause  
| | | | Ex parte McCardle  
| | | Separation of Power limit on Congress  
| | | | U.S. v. Klein  
| | o Justiciability limits  
| | Advisory opinion  
| | | | Opinion of the Justices  
| | | | Hayburn’s Case  
| | | | Plaut v. Spendthrift Farm  
| | Standing: Constitutional  
| | | Allen v. Wright  
| | | Mass. v. EPA  
| | | Clapper v. Amnesty International USA (supp. p.1)  
| | | Hollingsworth v. Perry (supp. p.12)  
| | | U.S. v. Windsor (supp. p.19)  
| | | - Injury-  
| | | | City of LA v. Lyons  
| | | | Lujan v. Defenders of Wildlife  
| | | - Causation/Redressability-  
| | | | Linda R.S. v. Richard D.  
| | | | Warth v. Seldin  
| | | | Simon v. Eastern Kentucky Welfare  
| | | | Duke Power v. Carolina Envir.  
| | Casebook: pp. 10-68  
| | Supplement: pp. 1-28  
| | Hornbook: pp. 15-30  
| | (Interpretative Limits); 45-82 (Review of state judgments, Justiciability limits); 151-170 (Congressional Limits)  
| | Optional, pp. 170-183  
| Class #3 | Sept. 2  
| | o Justiciability limits continued  
| | Standing: Prudential  
| | - 3rd party standing-  
| | | Singleton v. Wulff  
| | | Barrows v. Jackson  
| | | Craig v. Boren  
| | | Gilmore v. Utah  
| | | Elk Grove USD v. Newdow  
| | | - Generalized Grievances-  
| | | U.S. v. Richardson  
| | | Flast v. Cohen  
| | | Hein v. Freedom from Religion Fdn.  
| | Ripeness  
| | | Poe v. Ullman  
| | | Abbott Laboratories  
| | Mootness  
| | | Roe v. Wade  
| | | DeFunis v. Odegaard  
| | | Friends of the Earth v. Laidlaw  
| | | U.S. Parole Commn. v. Geraghty  
| | Political Question  
| | | Baker v. Carr  
| | | Vieth v. Jubelirer  
| | | Powell v. McCormack  
| | | Goldwater v. Carter  
| | | Nixon v. U.S.  
| | Casebook: pp. 68-113  
| | Hornbook: pp. 83-87 (3rd party standing); 89-99 (Associational Standing, generalized grievances); 104-151 (Ripeness, Mootness, Political Question)
## Chapter 2: Federal Legislative Power

### Class #4
Sept. 9

**Congress and the States**
- Framework for analysis
  - *McCulloch v. Maryland*

**Federalism and the role of states:** Intro to 10th Amendment
- Defining Congress’ Powers
- Necessary and Proper Clause
  - *U.S. v. Comstock*

**Congressional Power: Commerce Power**
- Initial era: Commerce power defined
  - *Gibbons v. Ogden*
- 1890s-1937: Limited federal commerce power
  - Among the States
    - *Shreveport Rate Cases (skim)*
  - State Sovereignty Limits On Congressional Power
- 1937-1990: Broad federal commerce power
  - Among the States
    - Civil Rights Laws
    - *Heart of Atlanta (brief)*
    - *Katzenbach v. McClung (Ollie’s BBQ)(brief)*
    - Regulatory Laws
    - *Hodel v. Indiana (skim)*
    - Criminal Laws
    - *Perez v. U.S.(skim)*
- 1990s - ???: Narrowing of Commerce Power; Tenth Amendment Constraint on Congress
  - *U.S. v. Lopez (brief)*
  - *U.S. v. Morrison (brief)*
  - *Gonzales v. Raich (brief)*

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### Class #5
Sept. 16

**Chapter 2: Federal Legislative Power** continued

**Commerce Power continued: Tenth Amendment**
- 1937-1990s: 10th Amendment
  - *U.S. v. Darby (skim)*
  - *National League of Cities v. Usery (brief)*
  - *Garcia v. San Antonio Metro Transit Auth. (brief)*
- Does the Tenth Amendment Limit Congress’ Authority?
  - *New York v. U.S. (brief)*
  - *Printz v. U.S. (brief)*
  - *Reno v. Condon (brief)*

**Taxing and Spending Power**
- *U.S. v. Butler*
- *Sabri v. U.S.*
- *South Dakota v. Dole*

**Congress’s powers under post-Civil War Amendments**
- *U.S. v. Morrison*
- *Katzenbach v. Morgan and Morgan (skim)*
- *City of Boerne v. Flores*
- *Shelby County, Alabama v. Holder (supp. 29-43)*

**Congress’ power to authorize suits against state government:**

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**Casebook:** pp. 115-173; 175-185; 190-220

**Hornbook:** pp. 238-247 (McCulloch); 247-278 (Commerce)

**Class Website:** articles on Health Care case

Eleventh Amendment
- Fitzpatrick v. Bitzer
- Seminole Tribe v. Florida
- Florida Prepaid v. College Savings
- Alden v. Maine

Class #6
Sept. 23

Chapter 3: Federal Executive Power
- Presidential elections and the Electoral College: How does it work?
- Inherent Presidential power
  - Youngstown Sheet and Tube Co. v. Sawyer
    - Executive privilege
      - U.S. v. Nixon
      - Cheney v. U.S
- Authority of Congress to increase executive power
  - Clinton v. City of N.Y.
- The administrative state (pp. 338-359; 363-368)
  - Non-delegation doctrine
    - Panama Refining Co. v. Ryan (skim)
    - Whitman v. American Trucking
  - Legislative veto
    - INS v. Chadha
  - Checking administrative power: appointment and removal
    - Morrison v. Olson (appointment)
    - Bowsher v. Synar
    - Morrison v. Olson (removal)
    - Free Enterprise Fund v. PCAOB
- Separation of powers and foreign policy
  - Foreign policy v. Domestic affairs
    - U.S. v. Curtiss-Wright
  - Treaties and Executive Agreements
    - Dames & Moore v. Regan

Class #7
Sept. 30

Chapter 3: Federal Executive Power continued
- Separation of powers and foreign policy cont.
  - War Powers
    - Prize Cases
    - War Powers Resolution
- Presidential power and the “War on Terrorism”
  - Detentions
    - Hamdi v. Rumsfeld
    - Boumediene v. Bush
  - Military tribunals
    - Ex parte Quirin
  - Drone attacks: Presidential Authority
- Checks on the President
  - Nixon v. Fitzgerald
  - Clinton v. Jones

Casebook: pp. 317-359; 363-376
Hornbook: pp. 343-380; 392-397
Stories: Ch. 15, The Story of the Guantanamo Cases: Habeas Corpus, the Reach of the Court, and the War on Terror, pp. 513-553
### Class #8  
Oct. 7

**Chapter 4: Limits on State Regulatory and Taxing Power**

- **Preemption**
  - Express
    - *Lorillard Tobacco Co. v. Reilly*
    - *Chamber of Comm. v. Whiting*
  - Implied
    - *Florida Lime & Avocado Growers v. Paul* (conflicts preemption)
    - *PG&E v. State Energy Resources* (impedes federal objective)
    - *Wyeth v. Levine*
    - *Arizona v. U.S.*

- **Dormant Commerce Clause (DCC)**
  - DCC analysis
  - Why DCC?
    - *H.P. Hood & Sons v. Du Mond*
  - DCC before 1938
    - *Cooley v. Bd. of Wardens, Port of Phil.* (skim)
  - Contemporary test for DCC
    - **Balancing approach**
      - *S. Carolina State Highway v. Barnwell* (trucks)
      - *S. Pacific v. Arizona* (trains)
    - Determining whether law is discriminatory
      - **Facially discriminatory**
        - *City of Philadelphia v. New Jersey*
        - *C&A Carbone v. Clarkstown*
        - *United Haulers v. Oneida-Herkimer*
        - *Hughes v. Oklahoma*
      - **Facially neutral/discriminatory impact**
        - *Hunt v. Washington State Apple*
        - *Exxon v. Gov of Maryland*
    - Determining whether law is discriminatory
      - **Facially neutral/discriminatory purpose**
        - *West Lynn Creamery v. Healy*
        - *Minnesota v. Clover Leaf Creamery*
    - Analysis if law is discriminatory
      - *Dean Milk v. City of Madison, Wisconsin*
      - *Maine v. Taylor & U.S.*
    - Analysis if law is non-discriminatory
      - *Loren J. Pike v. Bruce Church*
      - *Bibb v. Navajo Freight Lines*
      - *Consolidated Freightways v. Kassel*

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### Class #9  
Oct. 14

- **Dormant Commerce Clause (DCC) continued**
  - Exceptions to the DCC
    - **Congressional Approval**
      - *Western & Southern Life Ins. v. State Bd. of Equalization, California*
    - **Market Participant**
      - *Reeves v. William Stake*
      - *White v. Mass. Council of Construction Employees*
      - *South-Central Timber v. Commissioner, Dept. of Resources of Alaska*
  - **Privileges and Immunities Clause of Article IV, § 2**
    - *Toomer v. Witsell*
    - *United Bldg. and Trades Council v. City of Camden*
    - *Lester Baldwin v. Fish and Game, Montana*
    - *Supreme Ct. of N.H. v. Piper*
Chapter 5: Structure of Constitution’s Protection of Civil Rights and Civil Liberties

- Application of Bill of Rights to States
  - Before Civil War
    - Barron v. Mayor & City Council of Baltimore
  - After Civil War: 14th Am., Privileges or Immunities Clause
    - Slaughter-House Cases
    - Saenz v. Roe
  - Incorporation of Bill of Rights into Due Process Clause of the Fourteenth Amendment
    - Palko v. Conn. (skim)
    - Adamson v. California (skim)
    - Duncan v. Louisiana (skim)
    - McDonald v. Chicago

Class #10
Oct. 21

Chapter 5: Structure of Constitution’s Protection of Civil Rights and Civil Liberties continued

- Application of Bill of Rights to Private Action: State Action Doctrine
  - Requirement for State Action
    - Civil Rights Cases: U.S. v. Stanley
  - Exceptions to State Action doctrine
    - Public Function Exception
      - Marsh v. Alabama
      - Jackson v. Metropolitan Edison
    - Elections
      - Terry v. Adams
    - Private property used for public purposes
      - Evans v. Newton
      - Shopping Mall
      - Amalgamated Food v. Logan Valley
      - Lloyd v. Tanner
      - Hudgens v. NLRB

- Entanglement
  - Judicial and Law Enforcement Actions
    - Shelley v. Kraemer
    - Lugar v. Edmondson Oil (prejudgment attachment) (skim)
    - Edmonson v. Leesville Concrete (peremptory challenges) (skim)
  - Government Regulation
    - Burton v. Wilmington Parking Authority
    - Moose Lodge v. Irvis
  - Government Subsidies
    - Norwood v. Harrison
    - Rendell-Baker v. Kohn
    - Blum v. Yaretsky
  - Initiatives Encouraging Violations of Rights
    - Reitman v. Mulkey
    - Romer v. Evans

- Entwinement

Chapter 6: Economic Liberties

- Economic Substantive Due Process
  - Early history
  - Lochner era
    - Lochner v. N.Y.
Laws protecting unionizing
Maximum Hours laws
  ➢ Muller v. Oregon (skim)
Minimum wage laws
  ➢ Adkins v. Children’s Hospital (skim)
Consumer Protection Laws
  ➢ Weaver v. Palmer Bros. Co. (skim)
  ➢ Nebbia v. N.Y. (skim)
  o End of Lochnerism
    ➢ West Coast Hotel v. Parrish
    ➢ U.S. v. Carolene Products
  o Economic Substantive Due Process since 1937
    ➢ Williamson v. Lee Optical
    ➢ BMW v. Gore
    ➢ State Farm Auto Ins. Co. v. Campbell
    ➢ Phillip Morris USA v. Williams

Class #11
Oct. 28

Chapter 6: Economic Liberties continued

  • Contracts Clause
    ➢ Home Building & Loan v. Blaisdell
      o Government interference with private contracts
        ➢ Energy Reserves v. Kansas Power & Light
      o Government interference with government contracts
        ➢ U.S. Trust Co. v. N.J.
  • Takings Clause
    o Is there a taking?
      ▪ Possessory Takings
        ➢ Loretto v. Teleprompter Manhattan CATV
        (supp. p. 51)
      ▪ Regulatory Takings
        ➢ Penn. Coal. Co. v. Mahon
        ➢ Miller v. Schoene
        ➢ Penn Central v. N.Y. City
        ➢ Lucas v. S. Carolina Coastal Council
          (total regulatory taking)
        ➢ Nollan v. California Coastal Commm. 
          (conditions on development)
        ➢ Dolan v. City of Tigard (conditions on development)
        ➢ Palazzolo v. R.I. (challenge to existing regulations when property newly acquired)
        ➢ Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency (moratorium)
    o Is it for public use?
      ➢ Hawaii Housing Authority v. Midkiff
      ➢ Kelo v. City of New London (public purpose)
    o Requirements for just compensation?
      ➢ Brown v. Legal Foundation

Casebook: pp. 646-710
Supplement: pp. 51-56
Hornbook: pp. 645-655
(Contracts Clause); 656-682 (Takings Clause)

Class #12
Nov. 4

Chapter 7: Equal Protection

  • Framework
  • Rational Basis test
    o Does the law have a legitimate purpose?
      ▪ Legitimate purpose
        ➢ Romer v. Evans

Casebook: pp. 711-761
Hornbook: pp. 684-720
Stories: Ch. 5, The Story of Dred Scott: Originalism’s Forgotten Past, pp. 155-186;
| Class #13  
| Nov. 11 | **Chapter 7: Equal Protection** continued  
| o Attack on “separate but equal”  
|   - Brown v. Board of Education  
| o Invalidation of segregation in other contexts  
|   - Johnson v. California  
| o Facially neutral laws  
|   - Discriminatory purpose / Discriminatory impact  
|   - Washington v. Davis  
|   - McCleskey v. Kemp  
|   - City of Mobile v. Bolden  
|   - Palmer v. Thompson  
|   - Personnel Administrator of Mass. v. Feeney  
|   - Village of Arlington Heights v. Metro Housing Development  
|   - Batson v. Kentucky  
| o Remedies: the problem of school segregation  
|   - Brown v. Bd. of Education  
|   - Massive Resistance cases  
|   - Miliken v. Bradley  
|   - Bd. of Educ. Of Oklahoma City Public Schools v. Dowell  
|   - Parents Involved in Community Schools v. Seattle School District  
| | **Casebook:** pp. 761-824  
| | **Hornbook:** pp. 721-751  

| Class #14  
| Nov. 18 | **Chapter 7: Equal Protection** continued  
| o Affirmative Action  
|   - U.C. v. Baake  
|   - Richmond v. J.A. Croson Co.  
|   - Metro Broadcasting  
|   - Adarand Constructors v. Pena  
| o College and University Admissions  
|   - Grutter v. Bollinger  
|   - Gratz v. Bollinger  
| | **Casebook:** pp. 824-860; 866-905  
| | **Supplement:** pp. 57-63  
| | **Hornbook:** pp. 751-765 (affirmative action); 769-786 (gender)
- Fisher v. University of Texas at Austin (supp. p.57)
  - Gender Classifications
    - Level of Scrutiny: Intermediate Scrutiny
      - Frontiero v. Richardson
      - Craig v. Boren
      - U.S. v. Virginia
    - Proving Gender Classification
      - Geduldig v. Aiello
    - Gender Classifications Benefitting Women
      - Orr v. Orr
      - Miss. University for Women v. Hogan
      - Michael M. v. Superior Court of Sonoma County
      - Rostker v. Goldberg
      - Califano v. Webster
      - Nguyen v. INS

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<thead>
<tr>
<th>Class #15</th>
<th>November 25</th>
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<tbody>
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<td>Last class</td>
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**Chapter 7: Equal Protection** continued
- Election districts
  - Easley v. Cromartie
- Alienage
  - Graham v. Richardson
  - Foley Connelle (self-government, democratic process)
  - Ambach v. Norwick
  - Plyler v. Doe
- Non-marital children
- Age
  - Mass. Bd. of Retirement v. Murgia
- Disability
- Wealth
- Sexual Orientation

**Review for mid-term**

December 1-5: Study week

December 8-11: Exams

Interesting Constitutional law websites:

- [http://www.oyez.org/](http://www.oyez.org/)
- [http://law2.umkc.edu/faculty/projects/ftrials/conlaw/home.html](http://law2.umkc.edu/faculty/projects/ftrials/conlaw/home.html)
- [http://avalon.law.yale.edu/default.asp](http://avalon.law.yale.edu/default.asp)
- [http://topics.law.cornell.edu/constitution/overview](http://topics.law.cornell.edu/constitution/overview)