

Constitutional Law II
Spring 2014
Professor Fenton

LAW217 A
Mon., Tues., Thurs.
11:00-12:20am
Room F109
4 Credits

Course Materials and Course Structure

The required text for this course is Farber, Eskridge, and Frickey, *Cases and Materials on Constitutional Law* (5th ed. 2013). The syllabus as well as any supplemental materials is available on my website. A schedule for semester assignments is attached. You are responsible for all cases and materials assigned, regardless of whether each part of that assignment is specifically covered in class.

We will cover issues of individual rights, including examination of the due process and equal protection clauses. We will also address some of the basics of First Amendment free speech and religion clauses. Assignments are attached and are organized by subject matter. Read each assignment together for complete understanding.

In general, you have three primary tasks, the mastery of which will assist your success in this course: 1) identify current doctrine, its development, implication and applications; 2) understand and make relevant arguments, identified by the justices, and otherwise; and 3) identify the potential areas/arguments for change.

Class Participation

Class participation is mandatory. Students will be called on **randomly** in each class. Participation on one day will not shield you from participation on the next. Thus, all students are expected to be prepared to field questions, especially those concerning basic doctrine and "black letter" applications. In addition, students should focus on understanding the broader theoretical implications and policy issues underlying the "black letter" applications. You should expect to be called on more than once during the semester.

Class attendance and class participation are mandatory. If you miss class for any reason, you must discuss your absence with me. You must not miss more than four classes for any reason. Barring extenuating circumstances, refusal to comport with these requirements may be harmful to your final grade. I retain the option of lowering your grade by as much as a half grade (no more) for poor class attendance or participation. I also have the option of raising your grade by as much as a half grade (no more) for excellent participation. In extreme cases, you may be removed from the course.

You should view class participation as an important part of your learning experience. Class is your opportunity to experiment with the materials before you are evaluated on them. Volunteered answers in class are always welcome. Family law is necessarily a policy-laden course;

broad participation in class will assist you in grasping the intricacies of the potential policy issues and choices.

Religious Holy Days

The University of Miami, although a secular institution, is determined to accommodate those students who wish to observe religious holy days. Classes missed due to observances of religious holy days will count as excused absences only if you provide written notice of your intended absence(s) to me no later than the end of the first three meetings of our class.

Use of Personal Technology in the Classroom

You are best served during class period if you focus on class discussions and lectures. Furthermore, the classroom environment must support learning for all students; technological devices may be distracting to individuals in the class and thus undermine that goal. Accordingly, in addition to other professional conduct and the corresponding courtesies, please refrain from text messaging; instant messaging; e-mail use; use of cell phones (disable them in class); or any other communication devices. Also refrain from displaying wallpaper, screen savers, or other material on your laptop screen reasonably expected to offend or distract your classmates. It should also be understood that games (electronic or otherwise) are inappropriate for the classroom. I will sanction any student who interferes with the general learning environment in the class. Such sanctions may include, but are not limited to, the loss of the privilege to use a laptop in my class, individually or collectively.

Accommodations

If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact Iris Morera, Coordinator, Disability Services at the Office of Disability Services for information about available opportunities, resources, and services. Her phone number is 305-284-9907, and her email address is imorera@law.miami.edu. You may also visit the Disability Services website at www.law.miami.edu/disabilityservices

Final Examination

There will be a final examination at the end of the semester. The final will consist of several parts and will cover both “black letter” issues and policy choices. Only Units completed in our course will be covered on the exam.

Office Hours

By appointment.

You should always e-mail me in advance so that I know you are coming to office hours.

You are encouraged to ask basic questions via e-mail.

Contact Information

Rm: G374.

Phone: (305) 284-4275

E-Mail: zfenton@law.miami.edu

Homepage: <http://www.law.miami.edu/facadmin/faculty/zfenton.html>

SYLLABUS

Thurs., Jan. 16	<u>Connecting I and II</u> Minersville School District v. Gobitis (1940) (handout) West Va. Bd. Ed. v. Barnette (1943) (handout) Henderson, Gobitis and Barnette (handout)
Mon., Jan. 20	MLK DAY
Tues., Jan. 21	United States v. Carolene Products (focus: Footnote 4) (handout) Tussman & tenBroek (handout) <u>Rational Basis Review</u> p. 368-382 (Railway Express v. NY); p. 462-487 (City of Cleburne, Romer v. Evans)
Thurs., Jan. 23	p. 450-462 (MLB v. SLJ, Hernandez v. NY)
Mon., Jan. 27	<u>Strict Scrutiny: Race</u> 35-48; 74-78; 211-249 (Loving v Virginia, Yick Wo v. Hopkins, Washington v. Davis, Lawrence, <i>the Id, the Ego and Equal Protection</i>)
Tues., Jan. 28	/cont.
Thurs., Jan. 30	<u>State Action</u> p. 74-84 (Plessy v Ferguson)
Mon., Feb. 3	p. 250-275 (Shelley v. Kraemer, Moose Lodge v Irvis)
Tues., Feb. 4	<u>Intermediate Scrutiny: Gender</u> p. 367-68; p. 382-408 (Frontiero v Richardson, Craig v. Boren)
Thurs., Feb. 6	p. 408-420 (Califano v Webster, JEB v Alabama, Mississippi v. Hogan, VMI)
Mon., Feb. 10	/cont.
Tues., Feb. 11	p. 420-432 (Michael M v. Superior Court, Parham v. Hughes, Rotsker v Goldberg, Nguyen v INS)
Thurs., Feb. 13	/cont.
Mon., Feb. 17	<u>Affirmative Action</u> p. 276-291 (Bakke)

Tues., Feb. 18 p.291-314 (Fukikove v Klutznick, Wygant v Jackson v Bd of Ed., City of Richmond v. Croson, Adarand v. Pena, Ricci v DeStefano)

Thurs., Feb. 20 /cont.

Mon., Feb. 24 [Gender] p. 432-450 (Geduldig v. Aiello, Feeney,

Tues., Feb. 25 p. 314-332 (Grutter v. Bollinger)

Thurs., Feb. 27 p. 332-354 (Parents Involved v. Seattle Schl Distr)

Mon., Mar. 3 Facial Neutrality
p. 354-366 (Shaw v. Reno); [revisit Washington v. Davis p. 232-243];
McClesky v Kemp (handout)

Tues., Mar. 4 Fundamental Rights
p.540-551 (Lochner v NY, West Coast Hotel v. Parrish, Williams Lee
Optical); [revisit Tussman & tenBroeck]

Thurs., Mar. 6 /cont.

March 10-14: Spring Break

Mon., Mar.17 p. 511-540 (Slaughterhouse, Palko v Conn., Adamson v Ca., McDonald v
Chicago, Skinner v. Oklahoma)

Tues., Mar. 18 Selected EP and Fund. Interests
p. 123- 126 (Milliken v Bradley); p. 587-602(San Antonio v Rodriguez, Plyler
v Doe, Edgewood v Kirby)

Thurs., Mar. 20 /cont.

Mon., Mar. 24 p.633 -642 (Roe v. Wade)

Tues., Mar. 25 p. 677-692 (Lawrence v Texas, Perry v. Schwarzenegger) United States v.
Windsor (handout)

Thurs., Mar. 27 First Amendment
p. 727-738 (Texas v. Johnson, RAV v St Paul)

Mon., Mar. 31 p. 738-753 (Schenck, Abrams, Gitlow, Whitney, Dennis, Yates,
Brandenburg, Va. v Black)

Tues., Apr. 1 /cont.

Thurs., Apr. 3 p.753-764 (Sullivan, Bartnicki, Hustler, Snyder)

Mon., Apr. 7 p.764-777 (Buckley v. Valeo, McConnell v. FEC, Citizens United)

Tues., Apr. 8 Sexuality
p. 778-783 (Miller v. California, City of Renton, Pap's A.M.)

Fighting Words to Hate Speech
p. 783-804 (Cohen v. California, Beauharnais, Wisconsin v. Mitchell, Brown v. EMA).

Thurs., Apr. 10 Public Forum Doctrine
p. 804-811 (US v Grace, Hill v Colorado, Ward v Rock Against Racism, Perry v Educ. Assocn.)

Prior Restraint
p. 819-825 (Near v. Minnesota, Shuttlesworth, New York Times Co. v US, Madsen v. Women's Health)

Mon., Apr. 14 /cont.

Tues., Apr. 15 Free Exercise
p. 839-849 (Stansbury v Marks, Empl Div v. Smith, Lukumi Babalu v. Hialeah, Hosanna-Tabor v. EEOC)

Thurs., Apr. 17 Establishment Clause
p.849-866 (Everson v Bd of Ed, Wallace v. Jaffree, Lemon v. Kurtzman, City of Allegheny v. ACLU, McCreary Cty v. ACLU, Santa Fe School Dist. v Doe)

Mon., Apr 21 /cont.

Tues., Apr. 22 Financing Religious Programs
p. 867-877 (Zelman v. Simmons-Harris, Good News Club v. Milford, Locke v. Davey)

Wed., Apr. 23 **Review**