

# S YLLABUS

## Constitutional Law II

*Professor Garrett Epps*  
Spring 2012

*Class Schedule:* Monday/Wednesday, 6:15-7:05 p.m., Room LC207

*Instructor Contact info:*

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410-837-4956

Office: LC311

Office hours: by appointment

*Class attendance and participation:*

- (1) Attendance in this class is required. Students with more than two unexcused absences may be denied permission to take the examination. Under law school policy, five or more absences for any reason require withdrawal.
- (2) Class participation is (a) in small assigned groups that will consider specific problems and (b) in the larger class in which we will discuss the problems you have worked through in your small groups. Neither the small-group nor the full class participation is optional. *I will not accept an answer of "pass."* Students who are unprepared on a specific day should notify the instructor before class begins; they may be called on at the next class session. Students who are stumped by a question from the instructor may ask for help from other members of their small group.

*Grading:* Student grades will be given as follows: (1) one-third will be based on three multiple choice quizzes; (2) two-thirds will be based on the final exam. The final exam will be a two-hour, closed-book essay examination. Students will have 1,200 words to answer a single essay question. My essay questions tend to be based on undecided cases in the lower courts. There is little point in trying to decide what areas I am "likely" to test on based on my comments in class. The exam is a test of your general ability to apply what you have learned to a real world factual situation. As such, you will be graded based on (1) your mastery of the doctrinal material we have covered, *most particularly the names and factual context of the cases* (you will be expected to cite specific cases on the exam); (2) your ability to read and analyze a given hypothetical statute, ordinance, or regulation, using the analytical techniques you have mastered so far in your law study; and (3) your ability to apply caselaw to the specific facts of the hypothetical proposed in the exam. A "general knowledge" of First Amendment law will not be sufficient to produce an excellent grade; you will need to be able to use it in a lawyerlike manner.

*Objective:* The aims of this class are two-fold. First, students will receive a basic introduction to the doctrine and caselaw in the law of free speech and religious freedom under the First Amendment. Second, and equally important, students will attempt to become more sophisticated at deploying and countering constitutional arguments. Students should aim not simply to understand the caselaw and memorize case names, but to be able to distinguish cases, apply cases to novel fact patterns and argue analogically from cases. Class time will often be devoted to discussion rather than lecture and summarization of cases. During discussion of hypotheticals or policy issues, there is to be no use of laptops. Laptops may be used during lectures. However, “laptop use” denotes only taking of notes or consulting casebriefs you have prepared. It does *not* include any use of the internet during class. Students who do use their computers for non-class uses may be asked to leave the class, as these uses are distracting to both their fellow students and the instructor.

**Important note:** *There is no such thing as “black-letter constitutional law.” Please do not berate the teacher for failing to teach same. If I don’t teach you “the answer,” consider the possibility that there may not be “an answer” and that your responsibility as a student, a lawyer and a citizen may be to advocate for the best “answer” to this unsolved question.*

*Casebook and Study Aids:* The casebook for this course is SULLIVAN AND GUNTHER, FIRST AMENDMENT LAW (4<sup>th</sup> ed. 2010) or SULLIVAN AND GUNTHER, CONSTITUTIONAL LAW (17<sup>th</sup> ed. 2010. ) Be advised that you may *not* use any previous edition of the casebook. Students who wish to supplement the assigned readings with secondary material might want to consider Chemerinsky, *Constitutional Law* (Aspen 3d ed.). A commercial outline that is seldom grossly inaccurate is *Emanuel’s Constitutional Law*—but do not use any outdated editions. *I strongly recommend that you use no other supplementary materials. Casenotes, LegalLines, etc. are in my experience extremely prone to sloppy errors.*

*Key Dates:*

Wednesday February 8

Monday, March 6

Monday, April 23

First Multiple Choice quiz

Second Multiple Choice Quiz

Third Multiple Choice Quiz

## Readings:<sup>1</sup>

- 1) Overview: 1-14; *Howards v. McLaughlin* handout.
- 2) Incitement:
  - a) 45-48; then, 14-29; 804-06; then 772-787
  - b) 29-52 (note you are reading *Brandenburg* again); 787-810
- 3) Content basis, Substantial Overbreadth, Vagueness, and Prior Restraint: A Quick Introduction to Key Doctrines 197-199 (end of *Mosley*)(955-57); 208-09 (966-67) (to beginning of *O'Brien*); 232-33 (990-91); 243 (1001); 344-46 (1102-1104) (to beginning of note #2); 358-61 (1116-1119) (to “Licensing”); 367 (1126)(“Injunctions”).
- 4) “Fighting Words”: 52-66 (810-24)
- 5) Defamation and “Seditious Libel”: 66-85 (824-43)
- 6) “Hate Speech”: 85-103 (842-61)
- 7) Obscenity: 103-21 (861-897)
- 8) Child Pornography: 121-27 (879-87)
- 9) “Pornography” and Subordination of Women: 127-33 (885-91)
- 10) Nude Dancing and “Erogenous Zoning”: 133-45 (891-903)
- 11) Broadcast and Internet: 145-64 (903-22)
- 12) Commercial Speech:
  - a) 164-80 (922-38)
  - b) 180-96 (938-54)
- 13) Campaign Finance regulation: 435-77 (1193-1235)
  - 14) Content-basis and content-neutrality: 197-209 (955-66)
  - 15) Symbolic Speech: 209-232 (966-89)
  - 16) The Public Forum: 232-43 (990-1001)
  - 17) Time, Place and Manner, 243-67 (1001-25)
  - 18) Overbreadth and Vagueness: 344-58 (1102-16)
  - 19) Prior Restraint: 358-81 (1116-39)

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<sup>1</sup> Readings may be assigned singly or in combination for any given class.