Class Meeting Location and Times:
Room 204 Mondays and Wednesdays: 7:45 pm – 9:00 pm

My scheduled Office Hours for Fall, 2015 are:
Mondays, 3:00 – 4:30
Wednesdays 12:00-1:15 [except for days with faculty meetings], 3:00 – 4:30

Class Attendance, Preparation, and Participation: You are required to attend class regularly and be prepared for class; adequate class attendance, preparation, and participation are also essential if you wish to understand the material.

To conform with ABA and law school guidelines, you are entitled to 5 absences per semester. A student with more than 5 unexcused absences will not be permitted to take the final.

Unless told otherwise, for each class, you are responsible for: 1) any unfinished material from the preceding assignment: PLUS 2) the assignment following the one discussed in the preceding class. If you miss a class, you must obtain the class notes from the missed class before attending the next class.

Class participation is an essential part of the process of becoming a lawyer. All students are expected to be prepared to participate in each class session, as I will call on students randomly and solicit volunteers. If you are not prepared to discuss the day’s reading and the questions for the day’s assignment, please give me a note prior to class. This will avoid embarrassment for both of us.

I reserve the right to decrease a grade for unsatisfactory class participation or preparation.

Materials


There will also be material posted on the course TWEN site. Please make sure you are enrolled before class begins.
CLASS ASSIGNMENTS

I have given the first two class assignments below. The other assignments represent my tentative plan but the later assignments are subject to change. The official assignments from Class 3 on will be posted on the class TWEN site.

NOTE: When an assignment has a “Reading,” it refers to material posted on the TWEN site. When an assignment is terms “Document,” it refers to material in Documents of American Constitutional and Legal History

Class 1: The Boston Massacre
1. Reading I and II. What lessons does John Hancock want his listeners to derive from his version of the story of the Boston Massacre?
2. Reading III. Why does John Adams agree to represent the British soldiers? Would you?
3. Reading IV. What does Adams mean by “facts are stubborn things”?
4. Reading V. According to Justice Oliver, what standard should the jury use in deciding the guilt of the soldiers? Why do you think that is the standard?

Class 2: Magna Carta and the Case of the Seven Bishops
1. After reading all of the TWEN readings, please describe which parts of the story would implicate the following parts of the U.S. Constitution:
   1. Art. I, §7
   2. 1st Amendment [Hint: Many different parts of the 1st Amendment would be implicated by various parts of the reading]
   3. 6th Amendment
2. Read the Document I [as best you can] and Document 11 [up until the word “frequently” on page 25] and say which parts of our Constitution were derived, at least in part, from either Document.

Tentative Future Topics
[THE FINAL CLASS ASSIGNMENTS WILL BE POSTED ON TWEN]

Class 3: Law and Religion in the New World
1) Read Documents 3 & 5
   a) What do these documents say about the role of religion at the early stages of U.S. history?
   b) What sections of the Virginia Rules seems particularly noteworthy to you, and why?
2) Documents 7: How does “The Bloudy Tenent of Persecution” reflect a different view of the relationship between religion and government than the earlier documents?

Class 4: Slavery in the New World
1) How is the American view of slavery changing throughout the 1600's?
2) What is the basis for the Germantown protest?
3) What does Somerset say about English law of slavery? Why do you think it is different from the American system?

Class 5 Developing an American Perspective on Government and Rights
1) [Document 16] How does Blackstone’s view of Parliament reveal the weakness of Somerset?

2) [Document 13]
   a) How is Zenger’s case similar to and different from the Seven Bishops?
   b) What is the relevance of references to i) the Star Chamber; ii) horses and cows?

3) [Documents 17 & 18] What were the differing views concerning the rights of Americana vis a vis England prior to the Revolutionary War as expressed by the Virginia Stamp Act Resolutions and the Stamp Act Congress?

4) Document 22 “Common Sense”
   a) What is Paine’s view of Government in general, and Monarchy in particular?
   b) How does Common Sense foreshadow and differ from the Declaration of Independence?

Class 6: Revolution and Confederation
1) [Document 24]
   a) What is the basic “legal” argument Jefferson makes in the “Declaration of Independence”?

2) [Document 27]: How were the following dealt with under the Articles of Confederation [Think about how it differed from the U.S. Constitution]
   a) What is the relationship between Congress and the States [Art II and Art VI]
   b) How Congress is organized Article V p 75
   c) What is the meaning and importance of the last full paragraph of p 78 [beginning “The United States in Congress assembled shall never….“]?
   d) What is needed for an Amendment? [First paragraph Article 13 p79]

3) [Document 32]
   a) What do you think were the most important provisions of the Northwest Ordinance and why?

Class 7: Creation of an American Understanding of Church/State Relations
I. Early Thanksgiving Proclamations and Treaties
a) How do the Thanksgiving Proclamations and Treaties that preceded 1785 differ from those that follow?
   b) What is the historical relevance, if any, of these Proclamations and Treaties?
II. “Religious Freedom in Virginia” and “Virginia Statute for Religious Freedom”
   a) What was the purpose and goal of Patrick Henry’s proposal?
b) Of Madison’s arguments in his Memorial and Remonstrance, which, if any, do you think have the most relevance today?
c) What did the Va. Statute provide for Religious Freedom? What are its rationales?
d) Does this statute involve principles of Free Exercise, Establishment, or both?

**Class 8: Drafting the Constitution**
1) Did the framers exceed their authority? Does the proposed Constitution [See Art VII p 106] violate the Articles of Confederation [compare the language of Art XIII p 79, with Madison’s speech of June 19]? Should we care today?
2) What was the difference between a federal and a national government?
3) What is the significance of [and possible disagreement with] the phrasing “We the People”?
4) What were the major justifications for a) Not limiting the selection of members of the House of Representatives to “freeholders” ie property owners; b) Having State Legislators choose U.S Senators?
5) What is the framers’ view of democracy?
6) What is the significance of using the phrase “declare war” rather than “make war”?

**Class 9: Ratifying the Constitution**
I. George Mason’s Objections to the Constitution
1. Identify two of Mason’s objections that, with the benefit of 223 years’ experience, seem most valid to you.

II. Brutus, no. 1
2. What is Brutus’s argument against creating a country as large as the United States?

III. Federalist 10
3. How does Madison answer Brutus’s argument and argue that one large nation is “better” than 13 state-sized countries?
4. What does Madison mean by “faction”?

IV. Federalist 51
5. What is meant by the phrase “Ambition must be made to counter-act ambition”?
6. What is meant by the phrase “double security”? 7. Madison writes: “In a free government the security for civil rights must be the same as that for religious rights”. In what way are they the same?

**Class 10 Early Battles over the Constitution**
I. Documents 39 and 40
1) How do Jefferson and Hamilton understand the Commerce Clause?
2) Whose opinion ultimately prevailed in the U.S. Supreme Court?
II. Documents 42 and 43, and Readings I, II, and III
3) How do Madison and Hamilton understand the respective roles of the President vs the Congress in matters of war, peace, and neutrality?

III. Documents 46 (d)
4) What did the Sedition Act prohibit?

Class 11 Entering 18th Century
a) Document 50 Jefferson’s First Inaugural
1. What were Jefferson’s views of the conflict between the political parties?
2. What did he see as the “essential principles” of government?

b) Review your con law notes from Marbury v Madison and read both Federalist 78 (Document 36 b) and Reading I [Jefferson’s letter to Judge Johnson]
3) What is the best argument for judicial review?
4) What is the best argument against judicial review?

c) Review your con law notes from McCulloch v Maryland and Reading II [Madison’s letter to Spencer Roane]
5) What different interpretative techniques does Marshall use to rule in favor of the constitutionality of the national bank?
6) Why does Madison disagree?

Class 12 Evolution of Contract Law
Reading I. Dean v. Mason
1) The dissent gives the then-traditional view of the “sound price” doctrine, that paying a fair price implies that the goods are of decent quality. Why does the dissent think this is a good rule?
2) The majority announces a “new rule” of caveat emptor. Why does the majority reject the sound price doctrine and what rule replaces it?

Reading II. Laidlaw v Organ
3) What rule does the Court announce concerning disclosing information during contract negotiations? What is its rationale?

Document 86 Charles River Bridge
4. What is the contractual argument made by the Charles River Bridge Company for keeping their monopoly?
5. What policy arguments did the Court use in rejecting it?

Class 13 Slavery
A) Reading I and Documents 100 and 106 Fugitive Slave Act and Mass. Personal Liberty Act
1) What was the purpose and effect of these three laws?
B) Reading II [Narrative of the Life of Frederick Douglass, an American Slave]
2) What message does Douglas want his readers to take from the excerpt of Chapter I?
3) At the start of Chapter X, Douglass writes, "You have seen how a man was made a slave; you shall see how a slave was made a man"; at the end he writes, “I now resolved that, however long I might remain a slave in form, the day had passed forever when I could be a slave in fact.” What lesson does he want his reader to draw from this part of his autobiography?

C) Dred Scott [Document 107 and Reading III]
4) What are the major legal issues in Dred Scott?
5) Is Dred Scott a racist opinion?
6) Does Justice Curtis in his dissent refute the legal arguments of Taney’s opinion?
*7) What is the lesson one should take about the value of originalism after reading Dred Scott?

Class 14 Lincoln the Lawyer

Reading I [Lincoln Douglas Debates] and Documents 115, 118, 121, and 125 [First Inaugural; Emancipation Proclamation; Gettysburg Address, and Second Inaugural]
1) What is your opinion of Lincoln after reading the excerpts from the Debates?
2) In the First Inaugural: What is Lincoln’s legal analysis of a) Slavery and b) The role of the Supreme Court?
3) How does the Gettysburg Address contrast with the Emancipation Proclamation?
4) As a lawyer, what do you think are the strengths of the Gettysburg Address and the Second Inaugural?

Class 15 Birth of the 14th Amendment

Document 126 Black Codes
1. What do you think was the purpose of these laws?
2. Pick one specific section that jumps out at you as particularly noteworthy and tell why.

Reading I. Drafting the 14th Amendment
3. What was the purpose[s] of the 14th Amendment?

Document 135 Slaughterhouse Cases – both the portion in book, Document 135 and the portion in Reading II, which contains an excerpt that the book edited out:
4. Did the Slaughterhouse Cases view of the purpose[s] of the 14th Amendment get it right? Why or why not?

Class 16 Plessy

Reading I: “Freedman’s Bureau”
1) What was the role of the Freedman’s Bureau? Was it successful?

Reading II. “Why the Klu Klux”
2) What can be learned from reading “WHY THE KU KLUX”?
3) Should I have taken class time to assign it? Why or why not?

Document 152 Plessy v Ferguson
4) How did the Plessy majority justify upholding a law mandating segregation? How does Harlan answer?

Reading IV. “Jim Crow Laws”
5) What seems to be the purpose of the Jim Crow laws? Which ones do you find most notable?

Class 17 The Fight for Gender Equality
Reading I: Sarah Grimké, Legal Disabilities of Women, plus Documents 96, 136, 137, 160
1) What was the legal and social status of women in the 19th Century?
2) What was the purpose and likely effect of the Seneca Falls Convention?
3) Why does the Court uphold the law in Muller despite having previously struck down maximum-hour labor laws? What sources does the Court rely upon [look at note 1]? [Note that Document 160 is in Volume II]

Class 18 The Evolution of Legal Education

Questions for Reading I: Langdale v Holmes [on Common Law]
How do their views of legal education differ?
Which is more prevalent at this Law School?

Reading II: The Path of the Law
As you read this, consider the following questions [you do not have to answer any but those that are starred]

What does Holmes mean that the “meaning of every new legal thought” is to improve “prediction”?

Do you agree with Holmes that there is unfortunate confusion between morality and law?

Do you agree with Holmes’ definition of “duty to keep a contract” and “Meeting of the minds”?

Holmes says that reliance on “Logic” is the “natural error of the schools” Do you agree, and if so, what should we do about it?

Holmes says that “The rational study of law is still to a large extent the study of history.” Do you agree? What do you think of the “dragon” metaphor?
Should law schools require study of “economics” and “Jurisprudence,” as Holmes uses these terms?

What is the difference between teaching theory to the “competent” and the “incompetent”?

**What does Holmes mean when he says, “The duty to keep a contract at common law means a prediction that you must pay damages if you do not keep it— and nothing else.”**

**What does Holmes thinks is necessary for lawyers to find happiness? 23 Do you agree?**

In Document 181 Buck v Bell
What is the basis of Holmes’ decision in Buck v Bell? Is it correct?

*Class 19 Creation of a Theory of Free Speech*
Schenck; Abrams; Whitney; N.Y. Times v Sullivan; and Brandenburg

How does the doctrine of freedom of speech change over time?
What are the rationales given for an expansive view of freedom of expression?

*Class 20 Creation of a Theory of Freedom of Religion*
Reading I Scopes Trial and Reading II McCreary

Reading I: How do the arguments of Darrow and Bryan reflect modern debates surrounding science, religion, and law?
What was the final Tennessee court ruling on the Scopes case?

Reading II. What is the current state of the law on establishment?
Whose version of history, the Majority’s or Dissent’s, do you think is correct and why?

*Class 21 The New Deal Revolution*
Lochner, Schechter, Butler, Court Packing, West Coast Hotel, Jones & Laughlin Steel & Lopez

What is the holding of each of the six cases?
Based on these cases, what is the “modern law”?
Do you think the Court Packing Plan was unconstitutional?

*Class 22 World War II and War Powers*
A) Document 168 Ex Parte Merryman, Reading I [Lincoln’a Address to Congress], and Reading II, In re Yamashita
1) What is the legal argument in Merryman that Lincoln’s suspension of the writ of habeas corpus was unconstitutional? What was Lincoln’s response?
2) Why did the majority in Yamashita find the tribunal constitutional? Why did the dissent disagree?
3) Based on the above, what effect do you think the state of war should have on constitutional structure and rights?

B) Review you Con Law notes on Korematsu -[the case is also in Document 204] and Reading III Hohri v. United States
1) Explain how the facts in Hohri can be argued to show a) the Korematsu case was incorrectly decided as a matter of law and b) was correctly decided?

Class 23 The Vietnam War Era
Reading I: Holtzman v Schlesinger a) District Court and b) Court of Appeals
1. Was the Vietnam War a “declared” war? Why?
2. What is the District Court’s argument in Holtzman that a) the constitutionality of the Cambodia bombing is for the courts to decide and b) the bombing was unconstitutional?
3) Why did Court of Appeals find this to be a “political question”?

Class 24 The Civil Rights Era

Brown I and II (Documents 211 + 212); Southern Manifesto [Document 213]; Cooper v Aaron [Document 215]; Letter from a Birmingham Jail [Reading I]; and the Civil Rights Act of 1964 [Document 223]

1. What is the “holding” in Brown I and what standard or test does the Court use? What is the “holding” in Brown II?
2. How would you “answer” the Southern Manifesto?
3. Why was Cooper v Aaron necessary?
4. Martin Luther King’s Letter from a Birmingham Jail was an open letter addressed to eight members of the clergy. What lessons should lawyers draw from it?
5. What is Congress’s constitutional authority for enacting the Civil Rights Act of 1964?

Class 25: How Law Responds to Changing Technology
[TBA]