

**CONSTITUTIONAL LAW I  
LAW 650 – SECTION 339  
SPRING 2015 – PROF. PETERS**

**Syllabus (version 1 dated 12/01/14)**

*Note: This syllabus and the included schedule are subject to change with such notice as is practicable. Students should read this entire document carefully. Each enrolled student will be assumed to have read and understood its contents. Anyone with questions about the syllabus or the course should contact me (Prof. C.J. Peters).*

**My goals for the course.** My primary goal for this course is that you learn how to recognize, analyze, and argue constitutional issues in four main topic areas: equal protection, substantive due process, federalism, and separation of powers. My secondary goal is that you learn current black-letter law in each of these areas. My tertiary goal is that you learn something about the history of the law's development in each of these areas. With occasional exceptions, the secondary and tertiary goals will be pursued only to the extent that they serve the primary goal.

**The methodology of the course.** While there will be many exceptions and gray areas, I will try to follow a basic rule of thumb in teaching this course: *Prep time is primarily for learning the black-letter law; class time is primarily for learning how to apply the black-letter law.*

An implication of this rule of thumb is that I will spend relatively little in-class time lecturing about the cases in particular or legal doctrine in general, although I may from time to time give a short lecture to fill in gaps in the readings. For the most part, I will rely on the assigned readings to teach you the black-letter law and the history of its development – goals two and three described above.

In class, we will spend most of our time pursuing the primary goal mentioned above: learning to recognize, analyze, and argue constitutional issues (that is, to apply black-letter law). I will pose questions and problems in class – some of them previously distributed, some not – to facilitate this goal. We will approach those questions and problems in various formats, including small-group discussion and traditional “Socratic” Q&A.

Whatever the pedagogical benefits of this approach, it mimics what occurs in law practice, in which lawyers mostly *learn* the law behind closed doors (at an office desk, at a library table, on the train to and from work) and mostly *apply* the law in front of or collaboration with others (in a courtroom, at a negotiating table, on a conference call).

**What you will need to do to succeed in the course.** First, you will need to read all the assigned materials carefully, thoughtfully, and in advance of class. Otherwise you will not adequately learn the black-letter law or the history of its development, and you will be handicapped in learning how to apply the law because you will not be able to participate fully in classroom activities.

Second, you will need to attend class regularly (see my attendance policy below) and to participate actively. Otherwise you will not adequately learn how to apply constitutional law, and as a result your understanding of the law itself and its development also will be compromised.

Third, you will need to be proactive in enhancing your understanding of the law and its application by, for instance (and this is not intended to be an exhaustive list): looking up terms in the readings with which you are not familiar; referring to the Constitution whenever one of its provisions is mentioned in the readings; taking advantage of the various outlines, rubrics, practice questions, and other resources I will make available; discussing the materials with classmates; regularly attending Law Scholar sessions; and (above all) coming to see me after class or during my office hours if there's something you don't fully understand or would like to explore further.

**Class meetings.** Except as otherwise announced or indicated on the schedule, class will meet every Tuesday and Thursday from 1:30 to 3:20 p.m. in AL 408.

**Class attendance policy.** Pursuant to ABA and School of Law policy, each student will be allowed a maximum of five (5) absences during the semester. Any student who is absent from more than five classes will be assessed a full one-grade reduction in his or her final grade in the course (e.g., from a B+ to a C+). In addition, any student who is absent from more than seven (7) classes will be withdrawn from the course and given a final grade of "WA" (withdrawn due to absences), which will require that student to retake the course. Reasons for absences are irrelevant, except as required by School of Law or University policy.

I will monitor attendance by means of a sign-in sheet circulated at the beginning of class each day. I reserve the right to count students who come in late as absent, although I typically will not exercise that right except in cases of egregious or repeated tardiness. Each student is responsible for keeping track of his or her own attendance record and for contacting me in case of questions or potential discrepancies.

**TWEN website.** Use of the TWEN website is a required element of the course. Most required readings will be made available only on the TWEN site, and important notices will be distributed to the e-mail address you have registered with Westlaw (so make sure that address is current).

**Required texts and class readings.** There is no casebook for this course. The required texts are history books: volumes I and II of Melvin I. Urofsky & Paul Finkelman, *A March of Liberty: A Constitutional History of the United States* (3<sup>rd</sup> ed. 2011), published in paperback by Oxford University Press. You must acquire the third editions (not the second editions) of both volumes.<sup>1</sup>

---

<sup>1</sup> Note that Professors Urofsky and Finkelman also publish two "Documents" volumes designed to accompany the narrative volumes I have assigned; at least one professor who teaches American Legal

Most of the cases assigned for the course will be edited by me and posted on the TWEN course website under the class number as listed on the syllabus (e.g., Class 1, Class 2, etc.). You will need to download the assigned cases and bring them with you to class in some easily accessible form (digital or hardcopy). Sometimes the assigned cases will be preceded by a short introduction designed to focus your attention on specific aspects of the decision that will be relevant to class discussion. When this occurs, we will discuss other aspects of the cases in addition to those highlighted in the introduction, so be sure to read the entirety of each case carefully. Occasionally I may require you to locate full versions of cases online or hand out cases in class.

The assignment for most classes also will include a set of class discussion problems. Time permitting, and with occasional modifications, we will use the discussion problems as the template for group problem-solving in class.

From time to time I will assign additional materials and post them to TWEN. These materials may include outlines or rubrics designed to help you understand and apply the law. Some of these materials are included on the attached schedule; others will be added later.

The length of daily assignments will vary, and I strongly recommend that you look at each assignment well ahead of time to get a sense of how long it will take you to complete. As a general rule, the reading will be on the heavy side, and it almost invariably will be dense and complex. This is not simply me being mean. Constitutional law (like most law) just *is* voluminous, complex, and dense. And since most of constitutional law, like most of law generally, is *written* law, there is no way yet devised of learning it or practicing it effectively without doing a lot of reading.

**Computers in the classroom and note-taking.** Empirical research suggests that students benefit more from taking class notes the old-fashioned way – writing them by hand – than from typing them into a computer. (See this June 2014 article from *Scientific American* online: <http://www.scientificamerican.com/article/a-learning-secret-don-t-take-notes-with-a-laptop/>.) Computers present the obvious problem of distractions and the less obvious, but probably more serious, problem of “court reporter’s syndrome”: note-takers tend to “zone out” and simply record everything they hear without mentally processing it. Nonetheless, I am not taking the step of banning computers from the classroom. I want you to be able to access the online course materials in the classroom if you choose, rather than printing them out before class. And sometimes computers serve other useful classroom functions. But I do strongly suggest that you at least experiment with taking notes by hand this semester.

**PowerPoint slides and recordings of class sessions.** If I will be using PowerPoint slides in class, I typically will post them to TWEN shortly before the class session. The slides will remain posted throughout the semester.

---

History at UB routinely assigns these Documents volumes. You do not need to acquire the Documents texts for this course, so be careful not to purchase them by mistake.

Technology permitting, I also will make an audio-visual recording of each class session, which enrolled students can then access online using Panopto. Instructions for accessing these recordings will be distributed and posted during the first week of class. Note, however, that watching the Panopto videos is not a substitute for actual class attendance: the A/V quality is not great, the technology sometimes fails, and watching a recording does not allow you to participate in classroom activities.

**Other distractions in the classroom.** Please note and respect the following policies, and contact me if you have any questions or think you have a good reason for an exception.

- Any sound-emitting devices (e.g., cell phones) must be muted or switched off during class.
- Unless I specifically allow otherwise, you may not communicate telephonically or electronically with anyone else while class is in session.
- Please avoid any behavior that might distract a classmate, or for that matter the instructor. Common sense should be your guide here; it will be mine in enforcing the policy.

**Reaching the instructor.** My office is AL 516. I will post regular weekly office hours at the beginning of the semester and usually will schedule special hours before the exam and following the problem sets. With occasional exceptions, meetings during my open office hours are first-come, first-served, and barring some pressing engagement I will attempt to accommodate everyone who shows up. If you want to meet with me but for some reason can't attend my office hours, send me an e-mail and we will make a special appointment. You also are welcome to drop in if you see me in my office outside my posted hours.

My office phone number is 410-837-4509 and my e-mail is [cpeters@ubalt.edu](mailto:cpeters@ubalt.edu). My assistant, Laurie Schnitzer, in AL 1112, can be reached at 410-837-4689 and [lschnitzer@ubalt.edu](mailto:lschnitzer@ubalt.edu).

**Law Scholar.** The Law Scholar for this course is Paul Burgin, who was an outstanding student in my Spring 2014 Con. Law I course. He will introduce himself to you and announce a weekly meeting time during the first week of the semester. Whether to attend the Law Scholar sessions is up to you, but I strongly recommend that you at least give it a try.

**Assignments and grading.** Subject to the attendance policy described above, your final grade in the course will be based on the following three components. See the schedule at the end of this syllabus for the anticipated date of each component.

- *Problem Set No. 1: 10% (10/100 points)*
- *Problem Set No. 2: 15% (15/100 points)*
- *Final Exam: 75% (75/100 points)*

After the final exam, I will aggregate the points earned by each student on these three components to determine a total. I then will assign grades based on students' total scores according to the School of Law's required first-year curve.

**Study aids and treatises.** I do not keep up with the many constitutional law study aids that are available. However, for good general overviews of most constitutional law topics and cites to leading cases, I myself regularly use Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (Aspen, 4th ed. 2011). It is clear, concise, and reasonably comprehensive, although the 2011 edition is gradually going out of date. I expect the author will publish an updated edition soon.

**Schedule of assignments.**

- Assignments from the Urofsky & Finkelman (UF) texts are identified as follows:  
 UFv1 = Volume I  
 UFv2 = Volume II
- A copy of the Constitution appears at the end of each volume of UF. In addition to the constitutional provisions expressly listed below, you should read any other provisions mentioned in the assigned reading.
- Unless otherwise indicated, readings other than those from UF can be downloaded from the TWEN website, on the Course Materials page, under the applicable class number.
- Remember to read and carefully consider the discussion problems posted on TWEN for most class meetings, which are not included in this schedule.

<b>Class/Date</b>	<b>Topics</b>	<b>Cases/Materials</b>	<b>Constitutional/Statutory Provisions</b>
<i>Class 1</i> TU 1/13	Introduction to the course  <i>Fill out the “How to Read a Constitutional Case” Worksheet for <u>Marbury</u> and bring it to class</i>	The course syllabus  <i>How to Read a Constitutional Case</i> and accompanying Worksheet (posted under Course Materials)  UFv1 pp. 163-66, 205-17  <i>Marbury v. Madison</i> , 5 U.S. 137 (1803)	U.S. Constitution
<i>Class 2</i> TH 1/15	The Constitution and equality: slavery under the 1789 Constitution	UFv1 pp. 64-66, 81-82, 98-100, 105-13, 115-18  Declaration of Independence [UFv1 pp. A1-A4]	U.S. Const., art. I, § 2, cl. 3; art. I, § 9, cl. 1; art. IV, § 2, cl. 3
<i>Class 3</i> TU 1/20	The Constitution and equality: slavery under the 1789 Constitution, cont.	UFv1 pp. 377-83, 409, 431-41  <i>Dred Scott v. Sandford</i> , 60 U.S. 393 (1857)	U.S. Const., amend. V, Due Process Clause
<i>Class 4</i> TH 1/22	The Constitution and equality: the Reconstruction Amendments and the “state action” doctrine	UFv1 pp. 447-52, 472-76, 479, 489-92, 497-504, 539, 544-46  <i>The Civil Rights Cases</i> , 109 U.S. 3 (1883)	U.S. Const., amends. XIII, XIV, XV

<b>Class/Date</b>	<b>Topics</b>	<b>Cases/Materials</b>	<b>Constitutional/Statutory Provisions</b>
<i>Class 5</i> TU 1/27	The Constitution and equality: the meaning of “the equal protection of the laws”	<i>Strauder v. West Virginia</i> , 100 U.S. 303 (1879)  UFv1 pp. 540-42, 546-50  <i>Plessy v. Ferguson</i> , 163 U.S. 537 (1896)	U.S. Const., amend. XIV, § 1, Equal Protection Clause
<i>Class 6</i> TH 1/29	The Constitution and equality: the demise of “separate but equal”	<i>Plessy</i> , cont.  UFv2 pp. 662-66, 851-70  <i>Brown v. Board of Education</i> , 347 U.S. 483 (1954) <i>Bolling v. Sharpe</i> , 347 U.S. 497 (1954)	
<i>Class 7</i> TU 2/3	The Constitution and equality: equal protection “strict scrutiny”	<i>Korematsu v. United States</i> , 323 U.S. 214 (1944)	
<i>Class 8</i> TH 2/5	The Constitution and equality: equal protection “rational basis” scrutiny	<i>Railway Express Agency, Inc. v. New York</i> , 336 U.S. 106 (1949) <i>New York Transit Authority v. Beazer</i> , 440 U.S. 568 (1979)	
<i>Class 9</i> TU 2/10	The Constitution and equality: equal protection “intermediate” scrutiny	<i>Craig v. Boren</i> , 429 U.S. 190 (1976) <i>United States v. Virginia</i> , 518 U.S. 515 (1996)	
<i>Class 10</i> TH 2/12	The Constitution and equality: tiers of equal-protection scrutiny and discriminatory purpose	<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886) <i>Washington v. Davis</i> , 426 U.S. 229 (1976)	
MO 2/16	<b>Problem Set No. 1 distributed via TWEN</b>		

<b>Class/Date</b>	<b>Topics</b>	<b>Cases/Materials</b>	<b>Constitutional/Statutory Provisions</b>
<i>Class 11</i> TU 2/17	The Constitution and equality: equal protection “strict scrutiny” revisited	<i>Regents of the University of California v. Bakke</i> , 438 U.S. 265 (1978) <i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003) <i>Gratz v. Bollinger</i> , 539 U.S. 244 (2003)	
<i>Class 12</i> TH 2/19	The Constitution and equality: equal protection “rational basis” scrutiny revisited	<i>Romer v. Evans</i> , 517 U.S. 620 (1996)	
MO 2/23	<b>Problem Set No. 1 due by 5:00 p.m. via TWEN</b>		
<i>Class 13</i> TU 2/24	The Constitution and liberty: “incorporation” of the Bill of Rights	UFv1 pp. 135-41, 542-44 <i>The Slaughter-House Cases</i> , 83 U.S. 36 (1872) <i>McDonald v. Chicago</i> , 561 U.S. 742 (2010)	U.S. Const., amend. XIV, § 1, Due Process Clause; amend. I-X
<i>Class 14</i> TH 2/26	The Constitution and liberty: “incorporation of the Bill of Rights and “substantive” due process	UFv1 pp. 569-84, 587; UFv2 pp. 591, 615-18, 626-30 <i>Slaughter-House and McDonald</i> , cont. <i>Lochner v. New York</i> , 198 U.S. 45 (1905)	U.S. Const., amend. V, Due Process Clause; amend. XIV, § 1, Due Process Clause
<i>Class 15</i> TU 3/3	<b>Discuss Problem Set No. 1</b>	Problem Set No. 1, model answers, and other supplemental materials	
<i>Class 16</i> TH 3/5	The Constitution and liberty: “substantive” due process, cont.	UFv2 pp. 621-23, 698-700, 710-13, 737-55, 758-59, 761-74 <i>West Coast Hotel Co. v. Parrish</i> , 300 U.S. 379 (1937) <i>United States v. Carolene Products Co.</i> , 304 U.S. 144 (1938)	



<b>Class/Date</b>	<b>Topics</b>	<b>Cases/Materials</b>	<b>Constitutional/Statutory Provisions</b>
<i>Class 17</i> TU 3/10	The Constitution and liberty: “substantive” due process, cont.	UFv2 pp.897, 917-20  <i>Griswold v. Connecticut</i> , 381 U.S. 479 (1965)	
<i>Class 18</i> TH 3/12	The Constitution and liberty: “substantive” due process, cont.	UF2v2 pp. 996-99, 1029-30, 1052-56, 1152-53  <i>Roe v. Wade</i> , 410 U.S. 113 (1973) <i>Planned Parenthood of Southeastern Pa. v. Casey</i> , 505 U.S. 833 (1992)	
3/16-3/20	<b>Spring break</b>		
<i>Class 19</i> TU 3/24	The Constitution and liberty: “substantive” due process, cont.	<i>Lawrence v. Texas</i> , 539 U.S. 558 (2003)	
<i>Class 20</i> TH 3/26	The Constitution and federalism: the nationalist purposes of the 1789 Constitution; the Marshall Court’s nationalist vision	UFv1 pp. 91-97, 102-03, 105-13 (review), 114-30, 141-48, 242-47  <i>McCulloch v. Maryland</i> , 17 U.S. 316 (1819)	Articles of Confederation [UFv1 pp. A5-A10]  U.S. Const., art. I, § 8
	The Constitution and federalism: the Marshall Court’s nationalist vision, cont.; the restrictive era of Commerce Clause jurisprudence	UFv1 pp. 248-51; UFv2 pp. 602-06, 618-20, 757-58  <i>Gibbons v. Ogden</i> , 22 U.S. 1 (1824) <i>United States v. E.C. Knight Co.</i> , 156 U.S. 1 (1895) <i>Hammer v. Dagenhart</i> , 247 U.S. 251 (1918) <i>Carter v. Carter Coal Co.</i> , 298 U.S. 238 (1936)	

Class/Date	Topics	Cases/Materials	Constitutional/Statutory Provisions
<i>Class 21</i> TU 3/31	The Constitution and federalism: the restrictive era of Commerce Clause jurisprudence, cont.; the permissive era of Commerce Clause jurisprudence	<i>E.C. Knight, Hammer, and Carter Coal</i> , cont.  UFv2 pp. 775-79, 877-79, 887  <i>United States v. Darby</i> , 312 U.S. 100 (1941) <i>Wickard v. Filburn</i> , 317 U.S. 111 (1942) <i>Heart of Atlanta Motel v. United States</i> , 379 U.S. 241 (1964)	
<i>Class 22</i> TH 4/2	The Constitution and federalism: the permissive era of Commerce Clause jurisprudence; the modern era of Commerce Clause jurisprudence	<i>Darby, Wickard, and Heart of Atlanta Motel</i> , cont.  UFv2 pp. 1070-76 <i>United States v. Lopez</i> , 514 U.S. 549 (1995) <i>Gonzales v. Raich</i> , 545 U.S. 1 (2005)	
MO 4/6	<b>Problem Set No. 2 distributed via TWEN</b>		
<i>Class 23</i> TU 4/7	The Constitution and federalism: the modern era of Commerce Clause jurisprudence, cont. (plus the Taxing and Spending powers)	<i>National Federation of Independent Businesses v. Sebelius</i> , 132 S. Ct. 2566 (2012)	

<b>Class/Date</b>	<b>Topics</b>	<b>Cases/Materials</b>	<b>Constitutional/Statutory Provisions</b>
<i>Class 24</i> TH 4/9	The Constitution and the allocation of national powers: congressional authority vs. presidential authority	UFv1 pp. 51-55, 76-77; 91-97, 112-13, 120-21 (review); 133-35, 152-59; UFv2 pp. 829-32, 845-48  <i>Youngstown Sheet &amp; Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952) (“ <i>The Steel Seizure Case</i> ”) <i>Marbury v. Madison</i> , 5 U.S. 137 (1803) (re-read questions 1 and 2 of Marshall’s opinion [pp2-5 of edited version; pp153-67 of Reporter version])	U.S. Const., art. I, §§ 1, 8; art. II, § 1, cl. 1, Vesting Clause; art. II, § 2; art. II, § 3, Take Care Clause
MO 4/13	<b>Problem Set No. 2 due by 5:00 p.m. via TWEN</b>		
<i>Class 25</i> TU 4/14	The Constitution and the allocation of national powers: congressional authority to limit or control the executive branch	<i>INS v. Chadha</i> , 462 U.S. 919 (1983) <i>Morrison v. Olson</i> , 487 U.S. 654 (1988)	U.S. Const., art. I, § 7; art. II, § 2, cl. 2, Appointments Clause
<i>Class 26</i> TH 4/16	The Constitution and the allocation of national powers: limits on judicial authority	UFv1 pp. 113-14 (review), 167-71, 371  <i>Allen v. Wright</i> , 468 U.S. 737 (1984)	
<i>Class 27</i> TU 4/21	<b>Discuss Problem Set No. 2</b>	Problem Set No. 2, model answers, and other supplemental materials	
<i>Class 28</i> TH 4/23	Capstone session: applying equal-protection, due-process, federalism, and separation-of-powers principles in <i>U.S. v. Windsor</i>	<i>United States v. Windsor</i> , 133 S. Ct. 2675 (2013)	

<b>Class/Date</b>	<b>Topics</b>	<b>Cases/Materials</b>	<b>Constitutional/Statutory Provisions</b>
TBD	<b>Final exam</b>		