

CONSTITUTIONAL LAW II COURSE INFORMATION

Professor Colin Starger

cstarger@ubalt.edu
Office: ALS 503
410-837-4212

Administrative Assistant

Laurie Schnitzer
ALS 1112
lschnitzer@ubalt.edu
410-837-4689

CLASS MEETING TIMES AND LOCATION

Tuesday, Thursday 6:15pm-7:05pm. ALS 608.

OFFICE HOURS

Tuesday, Thursday: 4-5:30pm

Also, please drop by my office anytime – I am very often there and enjoy informal discussions. I am also very happy to make appointments via email to meet at other times.

REQUIRED TEXT

KATHLEEN M. SULLIVAN & NOAH FELDMAN, *FIRST AMENDMENT LAW* (5th Ed. 2013).

- Please note that this First Amendment textbook is taken wholly from SULLIVAN & FELDMAN, *CONSTITUTIONAL LAW* (18th Ed. 2013). If you have the Sullivan & Feldman Constitutional Law text, you may use it in this class. You just need to add “884” to the readings specified below (i.e, readings for p. 1-14 in our textbook correspond to 885-898 in Con Law).

***** FIRST CLASS ASSIGNMENT 1/13/15*****

1. Sign-up for the course TWEN site.
2. Download and read the *Elonis v. United States* materials on TWEN
3. Read pp. 1-14 in our textbook.

COURSE POLICIES AND READINGS

POLICIES

- 1. Attendance** – Regular class attendance is mandatory. Students who have more than five absences will not be eligible to complete the course. Please note that under this policy, there are no “excused” or “unexcused” absences (with the exception for religious holidays). Attendance is established by signing the class attendance sheet. A student who is more than 5 minutes late may stay for class but may not sign the attendance sheet and be counted as present for that day.
- 2. Preparation** – This class relies on everyone arriving fully prepared to participate in the day’s discussion. At the most basic level, this means completing the assigned reading. Students who are unprepared should notify the instructor before class begins; they may be called on at the next class session. When I call on you to answer a question, getting answers “wrong” is entirely forgivable – and very often there is no single “right” answer at all. On the other hand, class discussion is impoverished if we are not all familiar with the day’s texts and therefore “on the same page.” As a general rule, failing to read the day’s assignment is not forgivable.
- 3. Professionalism** – Learning cannot effectively take place in an environment that is unprofessional or uncivil. To that end, I expect that you will observe basic professional courtesies such as arriving on time and turning off your cell phone. Given our subject matter, it is my hope that we can have lively class debates where all students feel comfortable participating and expressing their opinions. Respect for your colleagues is vital to fostering a healthy debate environment. At all times, remain mindful of the diversity of perspectives and experiences in our classroom and be respectful as you articulate your arguments. We need not agree on everything, but we do need to disagree professionally.

Note: Please contact me if something related to our class debates or discussions makes you feel uncomfortable or otherwise interferes with your ability to learn. I will make every effort to address any issues raised.

- 4. Computers + TWEN** – The use of laptops to take notes is permitted in our class. However, laptops must not be used to browse the Internet, check email, Tweet, and etc. I thus reserve the right to ban laptops if the temptations of the Internet cause disruptions or distractions. Meanwhile, each of you must enroll in the TWEN site for this course, which is available through Westlaw. Please regularly monitor the TWEN site for course updates, handouts. You will also be encouraged to post to the TWEN discussion boards.
- 5. Methods of Evaluation** –Your final grade will be based on a closed-book final examination. However, I may adjust your grade one grade step to reflect outstanding contribution to the class or egregious lack of contribution, e.g., raising a grade from a B+ to an A- for great participation, lowering a grade from an A- to a B+ for poor participation. Please note that grading in this course is governed by a mandatory curve that specifies that the class average

must be between 3.0 and 3.5. I will determine where to place the class average based on the quality of our classroom discussions.

READINGS

We have 28 class meetings over the course of the semester. We will go through the readings below in order. As you will notice, there are less than 28 reading assignments listed. Some material will require more attention and time to explore. At the end of each week, I will tell you what I expect to cover in the following week. Please note: I reserve the right to add or subtract readings based on our class conversations and ongoing developments in the world. (There is a lot of First Amendment litigation out there and we should not ignore it!).

- 1) Materials on *Elonis v. United States*: to be posted on TWEN ; Overview: 1-14.
- 2) Incitement (skill to be developed, distinguishing between “speech” and “the freedom of speech”) :
 - a. 47-50; then, 15-29
 - b. 30-54 (note you are reading *Brandenburg* again)
- 3) Content basis, Substantial Overbreadth, “Time, Place, and Manner,” Vagueness, and Prior Restraint: A Quick Introduction to Key Doctrines (Skill to be developed: identifying doctrinal terms that trigger different legal tests) 227-43; 283-86; 393-99 (end of first full paragraph); 408-14; 419-20.
- 4) “Fighting Words”: (skill to be developed: again, distinguishing protected speech from unprotected speech, learning the ways in which courts regularly narrow “exceptions” to the First Amendment) 54-71.
- 5) “Hate Speech”: 71-93 (skill to be developed: understanding the importance of statutory language and construction; questioning the use of the terms “content-neutral,” “content-based,” “subject matter based” and “viewpoint-based.”
- 6) *Elonis* revisited (Applying the tests you have learned for exceptions to the First Amendment)
- 7) Defamation and “Seditious Libel”: 94-125 (understanding the rationale and procedural implications of the “actual malice” standard; understanding the concept of “public official,” “public figure,” and “matter of public concern).
- 8) Obscenity: 125-44 (grasping the *Miller* test as an example of court narrowing of historical exceptions)
- 9) “Indecency” and Pornography, 144-64 (examining carefully the acceptable state interests in limiting speech on sexual matters)

- 10) Child Pornography: 164-69 (Witnessing the birth of a new “exception” to the First Amendment, understanding the concept of state interest as a tool for narrowing exceptions to the First Amendment)
- 11) New Media: 169-200 (Noticing the ways in which a specific forum, whether geographic or otherwise, shapes the extent of First Amendment speech in the forum)
- 12) Commercial Speech: 200-226 (understanding the definition of commercial speech and the basis for First Amendment protection of it, noticing the contrast between a speech-based and a speaker-based approach to First Amendment protection)
- 13) Campaign Finance regulation: 499-549 (Applying the lessons of commercial speech to the ongoing controversy over regulation of campaign finance, and interrogating the idea that the Supreme Court has held the “corporations are people” and “money is speech”)
- 14) Content-basis and content-neutrality and the problem of expressive conduct: 227-72 (Firmly understanding the conceptual difference between “pure speech,” expressive conduct (or “symbolic speech”), and pure conduct with an expressive motive; ability to apply the “*O’Brien* test”).
- 15) The Public Forum (understanding the types of public forums, understanding the “time place and manner test”)
 - a. 272-306
 - b. 306-338
- 16) Overbreadth and Vagueness: 393-411 (understanding the limits of and differences between two powerful First Amendment doctrines; the concept of the “chilling effect”)
- 17) Prior Restraint: 411-33 (understanding the difference between prior restraint and subsequent punishment; understanding why prior restraint is disfavored).