

Rev. 12/17

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW**

**SPRING SEMESTER**

**2018**

**SYLLABUS**

**CONSTITUTIONAL LAW II**

**LAW 655-412 (2019)**

**MICHAEL HIGGINBOTHAM**

## COURSE DETAILS

Professor: Michael Higginbotham

Time: Designated Tuesdays (see schedule of classes)  
5:45 pm- 7:35 pm

Course Category: Upper-Level Required

Classroom: Angelos Law Center Room 1002

Office Hours: Tuesday 3:30 – 4:30 pm and 8:00 – 9:00 pm and Thursday 3:30 -  
4:30 pm (or by appointment)

Office: Angelos Law Center Room 1115

Telephone: 410-837-4649

E-mail: [higginbotham@ubalt.edu](mailto:higginbotham@ubalt.edu)

Twitter: @professorhigg

Website: [fmichaelhigginbotham.org](http://fmichaelhigginbotham.org)

Assistant: Shavaun O'Brien

Office: Angelos Law Center Room 1112

Telephone: 410-837-4635

E-mail: [sobrien@ubalt.edu](mailto:sobrien@ubalt.edu)

Facsimile: 410-837-4560

TWEN/Web: Syllabus, distributed materials, announcements, and assignments  
available on TWEN or  
<http://law.ubalt.edu/academics/Semester.cfm>

Texts:

Required:  
Stone, Seidman, Sunstein, Tushnet, and Karlan, The First Amendment (Fifth Edition)  
(New York: Wolters Kluwer Publishers, Inc. 2016). Available in hardback or  
paperback at the University of Baltimore Bookstore.

Recommended:  
Nowak and Rotunda, Constitutional Law (Eighth Edition) (St. Paul: West Publishing  
Company 2010). Available in hardback at the University of Baltimore Bookstore.

Nowak and Rotunda, Principles of Constitutional Law (Fourth Edition) (St. Paul: West Publishing Company 2010). Available in paperback at the University of Baltimore Bookstore.

Both the required and recommended reading materials have been placed on reserve in the law library for your convenience.

## **COURSE REQUIREMENTS**

All students are required to read and be prepared to discuss, in class, the assigned materials, and are encouraged to read the supplemental materials. Assigned readings are based on the expectation that students will devote at least two hours of work outside of the classroom in preparation for every one hour spent within the classroom. However, in order to facilitate in-depth discussion and encourage the exchange of ideas, the class will be divided into four law firms. On various designated days (see schedule of classes) law firm members, selected in order from a published list, will comment on the readings and their relevance to the materials previously studied. Not only should these selected students be prepared to discuss assigned cases, they should be willing to answer questions for class discussion as well. Difficulty levels for questions may vary slightly from class to class or from case to case, but Professor Higginbotham will strive to maintain consistency for each student by mixing together both harder and easier questions. Students will not be evaluated when called on from the law firm list. Nevertheless, when selected they may pass if willing to accept an absence for the class session.

In past semesters, students have been asked to comment on no more than one occasion. It is unlikely that there will be any deviation from this previous practice.

If the complete assignment for any given class is not covered by Professor Higginbotham, students should finish that assignment on their own. Occasionally, it is necessary to spend additional time on more complex topics in order to be certain they are fully understood. Summaries at the end of each session will cover all of the most important information.

The law firms will be as follows:

- Firm A: The Warren Burger Firm
- Firm B: The Thurgood Marshall Firm
- Firm C: The Sandra Day O'Connor Firm
- Firm D: The William Brennan Firm

A list of the firm members will be distributed during the second week of class. Until such distribution, all students should be prepared to volunteer to comment on the assigned readings. Volunteers will not be graded on their answers but may receive extra-credit points.

Students are required to successfully complete a three-hour written final examination. The exam will be closed book and will consist of traditional hypothetical questions and multiple choice questions. Put simply, for essay answers students receive one point for the correct identification of the issue (there is only one issue per question), one point for the correct

statement of the rule, one point for the correct application of the rule to the facts, and one point for the correct resolution of the dispute. Without providing the correct rule, no points will be awarded for the application or conclusion sections. As to multiple choice questions, they are graded either correct or incorrect. No partial credit is given for multiple choice answers.

Constitutional Law II is a two-credit Upper-level Required Course. Class attendance is mandatory. Students who miss more than two class sessions, excused or unexcused, excluding sessions missed due to religious holidays or when an accommodation has been approved by the Associate Dean, will have their final grade lowered a half level. Students who miss more than three class sessions, excused or unexcused, excluding sessions missed due to religious holidays or when an accommodation has been approved by the Associate Dean, will not be permitted to take the final exam. Students are responsible for ensuring that they sign the attendance sheet before the end of each class session. A student's signature is the only accepted indicator of attendance. There are no exceptions to these rules.

Final grades will be based primarily on the quality of the final exam; however, class participation will be considered as well. At various designated times, students may receive extra-credit for volunteering a correct answer in class. Those students with substantial (usually five or more) extra-credit points will have their final grades adjusted upward. An exceptional extra-credit performance may cause your final grade to be raised a full level.

Students are encouraged to review their final exam and model answers, and discuss their overall performance with Professor Higginbotham. Students so inclined may contact Professor Higginbotham once final grades have been submitted.

## **COURSE DESCRIPTION**

The course will examine First Amendment aspects of the United States Constitution both from a practical standpoint as well as a theoretical one. The course will help students achieve an understanding of some of the underlying principles and theories of the First Amendment and will assist them in acquiring the ability to apply these principles and theories to practical issues involving freedom of expression and the constitution and religion. Accordingly, the examination of constitutional law will be approached through a traditional casebook method but with a problem-oriented emphasis. In this way, students will be encouraged to reflect both on the theoretical rules of constitutional law and their practical application.

Examination of the First Amendment will include two major substantive areas. The first area of inquiry will involve freedom of expression. We will start with a brief history and then move to a discussion of various content-based restrictions on expression involving dangerous ideas and information and low value speech. We will also examine various procedural restrictions on expression including overbreadth, vagueness, and prior restraint. We will then discuss various content-neutral restrictions on limitations on the means of communication and the press.

The second area of inquiry will involve the constitution and religion. After a brief historical overview, we will examine issues relating to the establishment clause and the free

exercise clause. The course will conclude with a session summarizing the material previously covered. This summary session will include a review of the final exam.

## **LEARNING OUTCOMES**

The course has two primary goals: First, the course is designed to teach students about substantive constitutional laws and principles relating to freedom of speech and religion. By the end of the course, students should be able to demonstrate knowledge of doctrinal constitutional law and the principles underlying that law. Knowledge of the underlying principles will help students understand how different rules and doctrines fit together and how to resolve various conflicts.

Second, the course is designed to improve the legal analysis skills of students. By the end of the course, students should be able to demonstrate legal analysis skills such as the capacity to pay careful attention to details, to recognize and utilize legal terminology, and to use case law and principles to analyze new fact patterns.

## **ACADEMIC INTEGRITY**

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at [http://law.ubalt.edu/academics/policiesandprocedures/honor\\_code/](http://law.ubalt.edu/academics/policiesandprocedures/honor_code/).

## **TITLE IX SEXUAL MISCONDUCT AND NONDISCRIMINATION POLICY**

The University of Baltimore's Sexual Misconduct and Nondiscrimination Policy is compliant with federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

## **DISABILITY POLICY**

If you are a student with a documented disability who requires academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or [lmetzger@ubalt.edu](mailto:lmetzger@ubalt.edu).

## SCHEDULE OF CLASSES

<u>Date</u>	<u>Session</u>	<u>Topic</u>	<u>Assignment</u>	<u>Firm</u>
<b>INTRODUCTION</b>				
Jan. 16	1	Overview of the Course Subject-Matter and Requirements	Syllabus pp. 1-7. Stone pp. 16, lvii-lix, lxiv-lxvi (read carefully notes on Brennan, Burger, Marshall, and O'Connor and lxxv-lxxix (First Amendment Timeline), prior to the initial session)	
<b>FREEDOM OF EXPRESSION</b>				
		History and Philosophy of Free Expression	Stone pp. 3-16. Nowak pp. 1265-1274 (supplemental).	
Jan. 23	2	Content-Based Restrictions: Dangerous Ideas and Information – Unlawful Conduct	Stone pp. 17-18, 22-23, 27-32, 35-38, 40-44, 46-48, 56-58. Nowak pp. 1252-1265, 1291-1303 (supplemental).	A/B
Jan. 30	3	Content-Based Restrictions: Dangerous Ideas and Information – Speech That Provokes A Hostile Audience Reaction	Stone pp. 69-74, 78-82, 84-90. Nowak pp. 1409-1412 (supplemental).	C/D
Feb. 6	4	Content-Based Restrictions: Low Value Speech – False Statements of Fact	Stone pp. 135-145. Nowak pp. 1389-1404 (supplemental).	A/B
		Content-Based Restrictions: Low Value Speech – Non-newsworthy Disclosures of Private Information and Threats	Stone pp. 158-171. Nowak pp. 1404-1409 (supplemental).	
Feb. 13	5	Content-Based Restrictions: Low Value Speech – Commercial Advertising	Stone pp. 171-177, 183-184. Nowak pp. 1352-1387 (supplemental).	C/D
		Content-Based Restrictions: Low Value Speech – Obscenity, Child Pornography, Animal Cruelty, and Violent Expression	Stone pp. 203-220, 224-227. Nowak pp. 1513-1524, 1527-1538 (supplemental).	
Feb. 20	6	Content-Based Restrictions: Low	Stone pp. 229-233. Nowak pp. 1410-	A/B

		Value Speech – Indecency	1412 (supplemental).	
		Content-Based Restrictions: Low Value Speech – Hate Speech	Stone pp. 255-257, 263-266, 268-269, 271-278. Nowak pp. 1413-1417 (supplemental).	
Feb. 27	7	Procedural Restrictions: Overbreadth and Vagueness	Stone pp. 115-116, 119-120. Nowak pp. 1274-1282 (supplemental).	C/D
		Procedural Restrictions: Prior Restraints	Stone pp.121-123, 127-132, 90-94, 98-99, 102-105. Nowak pp. 1303-1312 (supplemental).	
		Content Neutrality: General Principles	Stone pp. 287-288, 290-292, 293-294, 296-300. Nowak pp. 1447-1475 (supplemental).	
		Content Neutrality: Public Property and the Public Forum	Stone pp. 301-305, 317-318. Nowak pp. 1441-1447 (supplemental).	
Mar. 6	8	Content Neutrality: Government Funded Speech	Stone pp. 360-363, 369-373. Nowak pp. 1282-1291 (supplemental).	A/B
		Content Neutrality: Expressive Conduct	Stone pp. 384-391, 399-406. Nowak pp. 1475-1487 (supplemental).	
Mar. 13	9	Content Neutrality: Political Contributions	Stone pp. 409-416, 418-419, 428-431, 441-454. Nowak pp. 1487-1507 (supplemental).	C/D
Mar. 27	10	Content Neutrality: Right of Association	Stone pp. 471-481, 483-486. Nowak pp. 1418-1436 (supplemental).	A/B
		Content Neutrality: Freedom of the Press	Stone pp. 518-520, 527-529. Nowak pp. 1312-1329 (supplemental).	

### **THE CONSTITUTION AND RELIGION**

Apr. 3	11	Introduction to Religion	Stone pp. 539-549, 556-560. Nowak pp. 1539-1549 (supplemental).	C/D
		The Establishment Clause: The Non Endorsement Principle and De Facto	Stone pp. 561-567, 574-582, 591-593. Nowak pp. 1549-1571, 1604-1620 (supplemental).	

Establishments

Apr. 10	12	The Establishment Clause: Facially Neutral Statutes/Permissible Accommodation	Stone pp. 593-598, 603-607, 613-617, 646-648, 651-653. Nowak pp. 1571- 1604 (supplemental).	A/B, C/D
		The Free Exercise Clause	Stone pp. 623-627, 631-640. Nowak pp. 1620-1673 (supplemental).	
Apr. 17	13	Make Up Session (If Necessary) <b>SUMMARY</b>		
Apr. 24	14	Rules and Tests of Constitutional Law II (Final Exam Review) (Practice Exam to be Distributed in Week 12)		