

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW**

**SPRING SEMESTER**

**2016**

**SYLLABUS**

**CONSTITUTIONAL LAW I**

**LAW 650-329/2013**

**MICHAEL HIGGINBOTHAM**

## COURSE DETAILS

Professor: Michael Higginbotham

Time: Designated Tuesdays and Thursdays (see schedule of classes)  
10:00 – 11:50 a.m.

Course Category: First-Year Required

Classroom: University of Baltimore School of Law Angelos Law Center  
AL 802

Office Hours: Tuesday 9:15 – 9:45 p.m.  
Tuesday and Thursday noon – 1:00 p.m. (or by appointment)

Office: University of Baltimore School of Law Angelos Law Center  
AL 1111

Telephone: 410-837-4649

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

Secretary: Shavaun O'Brien

Office: University of Baltimore School of Law Angelos Law Center  
AL 1112

Telephone: 410-837-4635

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

Facsimile: 410-837-4560

Law Scholar: Julia Houp

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

TWEN: Syllabus, Distributed Materials, Announcements, and Assignments  
available on TWEN

Texts:

### Required

Stone, Seidman, Sunstein, Tushnet, and Karlan, Constitutional Law (Seventh Edition)  
(New York: Wolters Kluwer Law & Business 2013). Available at the University  
of Baltimore Bookstore.

## Recommended

Nowak and Rotunda, Constitutional Law (Eighth Edition) (St. Paul: West Publishing Company 2009). Available at the University of Baltimore Bookstore.

Nowak and Rotunda, Principles of Constitutional Law (Fourth Edition) (St. Paul: West Publishing Company 2010). Available 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. 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 two separate occasions. 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.

Class attendance is mandatory. Students who miss more than four class sessions, excused or unexcused, excluding sessions missed due to religious holidays, will have their final grade lowered a half level. Students who miss more than five class sessions, excused or unexcused, excluding sessions missed due to religious holidays, will not be permitted to take the final exam. Students are responsible for ensuring that they sign the attendance sheet at every class session. A student's signature is the only accepted indicator of attendance. There are no exceptions to these rules.

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 six 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 Shavaun O'Brien once final grades have been submitted.

## **COURSE DESCRIPTION**

The course will examine certain aspects relating to individual rights and structure of the United States Constitution both from a practical standpoint as well as a theoretical one. The goals of the course are to help students achieve an understanding of some of the underlying principles and theories of constitutional law and to assist them in acquiring the ability to apply these principles and theories to practical issues involving the role of the supreme court in the constitutional order, the distribution of national powers, the powers of congress, judicial efforts to protect the expansion of the market against assertions of local power, equality and the constitution, implied fundamental rights, and the constitution and private power. 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.

The course will begin by examining the constitution and the Supreme Court. We will start with a look at the basic framework, then move to an examination of the history, theory, and sources of judicial decisions, and conclude with a focus on case or controversy requirements.

The second area of inquiry will involve the distribution of national powers. We will examine three areas; presidential seizure, domestic affairs, and foreign affairs.

The third area of inquiry will involve federalism at work. We will begin by examining the history and evolution of the commerce clause doctrine. Next, we will look at some of the basic issues of federalism and judicial review. We will conclude with an examination of judicial efforts to protect the expansion of the market against assertions of local power. We will examine four areas; the fundamental framework, protection against discrimination, facially neutral statutes with significant effects on interstate commerce, and preemption.

The fourth area of inquiry will involve equality and the constitution. We will start with an examination of equal protection methodology including rational basis review. Next, we will study the history of race and the constitution including changing conceptions of equality. We will conclude with several sessions on heightened scrutiny review.

The fifth area of inquiry will involve implied fundamental rights. We will examine two areas; equal protection and fundamental interests, and modern substantive due process and procedural due process.

The sixth area of inquiry will involve state action, baselines, and the problem of private power. We will examine four areas; state action and individual autonomy, governmental neutrality, impermissible departures from neutrality, and required departures from neutrality.

The course will conclude with a session discussing controversial issues and a session summarizing the material previously covered. This summary session will include a review of the final exam. Also, the Law Scholar will hold an exam review session on the last scheduled day of class.

### SCHEDULE OF CLASSES

<b>Date</b>	<b>Session</b>	<b>Topic</b>	<b>Assignment</b>	<b>Firm</b>
<b>INTRODUCTION</b>				
Jan. 12	1	Overview of the Course Subject-Matter and Requirements	Syllabus pp. 1-6. Stone pp. lvii-lxxxviii (read carefully notes on Brennan, Burger, Marshall, and O'Connor) (please read this material prior to the initial session).	
<b>THE CONSTITUTION AND THE SUPREME COURT</b>				
Jan. 14	2	Basic Framework	Stone pp. xli-xlvi (Articles I-VI), xlix-1 (Amendments I-X), 18-21 (Federalist 51), 25-44. Nowak pp. 1-36 (supplemental).	
Jan. 19	3	History, Theory, and Sources	Stone pp. 7-15, 48-76, 81-82. Nowak pp. 36-39, 139-157 (supplemental).	A/B, C/D
Jan. 21	4	Case or Controversy Requirements	Stone pp. 82-84, 106-129, 138-148, 153-155. Nowak pp. 65-138 (supplemental).	A/B
<b>THE DISTRIBUTION OF NATIONAL POWERS</b>				
Jan. 26 & 28	5 & 6	Presidential Seizure / Foreign Affairs	Stone pp. 367-411. Nowak pp. 237-281 (supplemental).	C/D
Feb. 2 & 4	7 & 8	Domestic Affairs	Stone pp. 411-451. Nowak pp. 282- 295, 313-333 (supplemental).	A/B
<b>FEDERALISM AT WORK: CONGRESS AND THE NATIONAL ECONOMY</b>				
Feb. 9	9	Commerce Clause: History and Evolution	Stone pp. 172-175, 179-199. Nowak pp. 158-182 (supplemental).	C/D
Feb. 11	10	Commerce Clause: Federalism and Judicial Review	Stone pp. 159-172, 203-206, 210-218. Nowak pp. 182-226 (supplemental).	A/B
Feb. 16	11	Basic Protection Against Discrimination, Facially Neutral Statutes, and Preemption	Stone pp. 240-253, 260-268, 273-277, 280, 283-292. Nowak pp. 334-399 (supplemental).	C/D
<b>EQUALITY AND THE CONSTITUTION</b>				
Feb. 18 & 23	12 & 13	Equal Protection Methodology: Rational Basis Review	Stone pp. 453, 770-771, 497-520. Nowak pp. 741-803 (supplemental).	A/B
Feb. 25 & Mar. 1	14 & 15	Race, the Constitution, and Changing Conceptions of Equality	Stone pp. 453-455, 459-475, 476-479, 482-489, 491-497. Nowak pp. 804-821, 833-861 (supplemental).	C/D
Mar. 3 & 8	16 & 17	Equal Protection Methodology: Heightened Scrutiny and the Problem of Race	Stone pp. 521-526, 528-537, 540-547, 554-559. Nowak pp. 821-833 (supplemental).	A/B
Mar. 10 & 22	18 & 19	Affirmative Action	Stone pp. 562-576, 580-598, 608-624. Nowak pp. 861-923 (supplemental).	C/D

<u>Date</u>	<u>Session</u>	<u>Topic</u>	<u>Assignment</u>	<u>Firm</u>
Mar. 24	20	Equal Protection Methodology: Heightened Scrutiny and the Problem of Gender	Stone pp. 629-631, 637-662, 669-671. Nowak pp. 973-1003 (supplemental).	A/B
Mar. 29	21	Equal Protection Methodology: Other Candidates for Heightened Scrutiny	Stone pp. 673-703, 707-708, 714-719. Nowak pp. 934-972, 1003-1007 (supplemental).	C/D
<b>IMPLIED FUNDAMENTAL RIGHTS</b>				
Mar. 31	22	Equal Protection and Fundamental Interests	Stone pp. 721, 729, 739-741, 769-771, 776-784, 807- 808, 814-818, 824-826, 828-834, 835-840. Nowak pp. 1091-1122, 1176-1194, 1197-1218 (supplemental).	A/B
Apr. 5 & 7	23 & 24	Modern Substantive Due Process/Procedural Due Process	Stone pp. 841-844, 849, 854-860, 873-888, 921-954, 958-960, 962-966, 972-973. Nowak pp. 461-503, 641-740, 1007-1091 (supplemental).	C/D
<b>STATE ACTION, BASELINES, AND THE PROBLEM OF PRIVATE POWER</b>				
Apr. 12	25	State Action and Governmental Neutrality	Stone pp. 1555-1569, 1573-1576, 1582-1584, 1592-1594, 1597-1604, 1620. Nowak pp. 595-640 (supplemental).	A/B, C/D
<b>SUMMARY</b>				
Apr. 14	26	Issues and Answers (Discussion of Selected Controversial Topics) (Optional reading materials to be distributed)		
Apr. 19	27	Rules and Tests of Constitutional Law I (Final Exam Review) (Practice Exam to be distributed)		
Apr. 21	28	Law Scholar Review Session		