

CONSTITUTIONAL LAW II

Jon Weinberg
Winter 2011

Course materials

The book is STONE *ET AL.*, CONSTITUTIONAL LAW (6th ed. 2009), with the 2010 supplement.

Office hours

My (tentative) office hours this semester will be Monday 2:00-3:30 p.m., Wednesday 3:30-4:30 p.m., Friday 3:30-4:30 p.m., and by appointment (except that there will be no Wednesday office hours on 1/26, 2/9, 2/23, 3/9, 3/23, & 4/13). You can reach me most easily at <weinberg@wayne.edu>.

Attendance and grading policy

Before each class meeting, I'll set out a copy of the seating chart, dated for that day. If you are prepared and ready to participate in class discussion, you can circle your name on the chart. If you do so for 80% of our classes, starting on January 14, I'll automatically raise your final grade. If you circle your name on a given day, of course, you must actually be prepared; if it turns out that you weren't, you forfeit your eligibility for the bump. Whether or not you circle your name, please sit in the seat you've selected on the chart, so that I can monitor attendance, as the ABA requires. I reserve the right to lower grades in egregious cases.

Examination

The final exam will be limited open-book. That is, you will be allowed to consult only the casebook, the supplement, any class handouts, an English-language dictionary, and any materials prepared by you. You will have three hours to write your answers. The final examination will determine your grade, subject to the adjustment I described above (except that if you earn an "A" on the final exam, you will not get an "A+" solely on the basis of the automatic bump). You may take the exam either using a laptop (and the EBB software), or the old-fashioned way.

Interim syllabus

I'm distributing now a syllabus that covers only the month of January, because I want to see how quickly we do (or don't) cover the material in this small-group setting. I'll distribute a new syllabus towards the end of the month.

I. EQUALITY

January 12 Casebook 441-61

The constitutional requirement that government not deny any person “equal protection of the laws” is phrased in general terms, but it derives from a specific desire to protect African-Americans from discrimination following the Civil War. What choices did nineteenth-century U.S. courts make in setting the relative legal positions of African-Americans and whites? How might (should?) they have chosen differently?

January 14 Casebook 461-88

The Supreme Court attacked the Jim Crow regime of Southern segregation, and articulated a principle of racial equality, in the *Brown v. Board* cases. What was that principle, exactly? Did the Court succeed? (What does it mean for a Supreme Court decision to “succeed”?)

January 19 Casebook 489-512

Can we generalize equal protection methodology? That is, is there a more general sense of what it means to treat people “unequally” that courts can apply? When should an ordinary government rule be seen as “unequal”?

January 21 Casebook 512-42

How should the courts analyze government rules that disadvantage racial minorities? Are they per se unconstitutional? If so, why? Should they be upheld in some circumstances? Which ones? How, indeed, should a court decide which rules are subject to this analysis?

January 26 Casebook 542-71

How should the courts approach government action intended to undo segregation or to benefit racial minorities?

January 28 Casebook 571-90, 600-619, Supp. 71-72

More on laws intended to undo segregation or to benefit racial minorities.