CLASS 1

Britain and Colonial America – The Law of Nuisance
"Unreasonable Interference" with Property
Public v. Private Kinds
The Industrial Revolution and Non-Traditional Nuisances
Remedial Problems – Cost and Uncertainty, Judicial Discretion and Equitable Defenses
Early Health and Safety Regulations Meet Substantive Due Process

Mugler v. Kansas, 123 US 623, 661 (1887)
It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police powers of the state. There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, * * * the courts must obey the constitution rather than the law-making department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty, indeed, are under a solemn duty, to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the constitution.

Lawton v. Steele, 152 US 133, 137 (1894)
To justify the state in thus interposing its authority in behalf of the public, it must appear first that the interests of the public generally, as distinguished from those of a particular class, require such interference, and second that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.

Lochner v. New York, 198 U.S. 45, 75 (1905) (Holmes' Dissent)
The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well known writers, is interfered with by school laws, by the Post Office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics.

Use of the Doctrine to Defeat New Deal Economic Programs:
Schecter Poultry Corp. v. United States, 295 US 495 (1935)
Panama Refining Co. v Ryan, 293 US 388 (1935)

Demise of the Doctrine:
West Coast Hotel v. Parrish, 300 U.S. 379 (1937) (Washington State Minimum Wage Law)
United States v. Carolene Prods. Co., 304 US 144, 152, n. 4 (1938) (Filled Milk Regulation)

CLASS 2

Nuisance Recap – Public v. Private
Cost and Uncertainty
Judicial Discretion – Trial and Appellate Levels
Equitable Defenses
"Unreasonable Interference" with Property

Public Use -- *Berman v. Parker* (1954) – 1945 DC Redevelopment Act to acquire "blighted areas" and sell to developers under an urban renewal plan

> *Midkiff v. Hawai'i Housing Authority* (1984) – Hawai'i Land Reform Act challenge – state and federal government owned 49% of the land in the state, while the trust and 72 others owned 47% of the remaining private land, much of which was leased. Under state legislation,
> Housing Authority used its bonding authority for financing and then used eminent domain and sold land to lessees
>
> *Kelo v. City of New London* (2005) – USSC approval of condemnation of "Little Red House" provokes reaction in states

Early Takings Cases – In 1897, the USSC applied the takings clause to the states in *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*, 166 U.S. 226 (1897), Fifth Amendment "incorporated" to apply to states, and in 1922 in *Pennsylvania Coal v. Mahon*, the court found the takings clause also limited government regulation.

First Zoning Case – *Euclid v. Ambler* (1926)
Substantive Due Process Case
Facial (rather than as applied) Challenge
Three Zones – U2 (single family), U3 (apartments) and U6 (industrial)
Three-Judge Court Below Granted Injunction – *Euclid v. Ambler Realty*, 297 F.307, 312-13 (N.D. Ohio, 1924)

The following excerpt from Judge Westover's opinion at the three-judge District Court level begins with a reference to *Buchanan v. Warley*, the unsuccessful attempt of Louisville, Kentucky to use a kind of zoning (by which land in whole blocks were available only on the basis of racial segregation, as a reason for voiding the Village of Euclid zoning ordinance:

> *Buchanan v.Warley*, 245 U.S. 60 (1917) An ordinance of the city of Louisville, held by the state Supreme Court to be valid and within the legislative power delegated to the city, districting and restricting residential blocks so that the white and colored races should be segregated, was held to be a violation of the Fourteenth Amendment and void. It seems to me that no candid mind can deny that more and stronger reasons exist, having a real and substantial relation to the public peace, supporting such an ordinance than can be urged under any aspect of the police power to support the present ordinance as applied to plaintiff's property. And no gift of second sight is required to foresee that if this Kentucky

> statute had been sustained, its provisions would have spread from city to city throughout the length and breadth of the land. And it is equally apparent that the next step in the exercise of this police power would be to apply similar restrictions for the purpose of segregating in like manner various groups of newly arrived immigrants. *The blighting of property values and the congesting of population, whenever the colored or certain foreign races invade a residential section, are so well known as to be within the judicial cognizance.* (Emphasis supplied)

75% Value Reduction Alleged
Circumstantial Analysis
*Fairly Debatable Rule

CLASS 3

Nectow v. Town of Cambridge (Substantive Due Process as applied case)

Penn Central v. New York City (1978)
Unappealed Designations and Denials of Certificates of Appropriateness
Recitation of *Armstrong v. US*
*Three Factors – Impact of Designation, Distinct Investment-Backed Expectations and Character of Governmental Action
Parcel as a Whole

Physical invasion or occupation is a categorical or *per se* taking
Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982)

Nollan v. California Coastal Commission, 483 U.S. 825 (1987)
Easement as Property Interest
"Essential Nexus"

CLASS 4

CONDITIONS

Dolan v. City of Tigard, 512 U.S. 374 (1994)
Land Dedication
Nexus Present
Issue Was Degree of Connection
Invocation of *Armstrong*
Three Tests – Illinois, California and Rehnquist's Rough Proportionality
Use of *Agins* (pre-*Lingle*)
Burden and Justifications by Quantifiable Findings
Not Apparently Applicable to Legislative Acts

Koontz v. St. Johns River Water Management District, 570 U.S. 595 (2013)
Negotiations leading to Denial
No Taking *per se*
Doctrine of "Unconstitutional Conditions"
Florida Statute regarding "Unreasonable Exercise" of Police Power
Emphasis on "Functional Equivalent" of Taking

Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005)
Non-Land Use Case
First Prong of *Agins* at Issue
"Functional Equivalent" of Taking
Due Process Violation Not Equivalent to Taking
Practical Issues of SDP Review
Nollan and *Dolan*

First English Evangelical Lutheran Church v. Los Angeles County, 482 U.S. 304 (1987)
*Pleadings Case
Temporary Taking Alleged
California Supreme Court Decision in *Agins* re: Remedy (Not reached by USSC)
CJ Rehnquist Opinion Worked off Text of Fifth Amendment
Ritual Recital of *Armstrong* – Justice and Fairness
Still Outstanding – 1. Measure of Damages for Temporary Taking
2. Delay or Mistake Issues