SYLLABUS


READING ASSIGNMENTS:

In addition to the principal cases, you are responsible for reading all note materials, including secondary cases and questions, that are included in the reading materials on the assigned pages. The page numbers listed below refer to the casebook unless otherwise indicated; “Supp.” refers to the annual supplement.

I. The Judiciary and the Federal Judicial Power
   A. Judicial Review and the Judicial Power 1-20, Federalist No. 78
   B. Political Questions 21-32
   C. Congressional Limits on the Judicial Power 32-49

II. Federalism
   A. Relationship between the Federal Government and the States 69-79 Federalist Nos. 10, 39 & 45
   B. Congress’s Commerce Power
      1. Pre-New Deal 80-92
      2. 1937 to 1990s 92-107
      3. 1990s to present 107-136
      4. Tenth Amendment as Independent Limit? 166-184
   C. Taxing and Spending Powers 136-158
   D. Treaty Power 158-162

III. State Regulation of the Economy
   A. Dormant Commerce Clause
      1. Pre-1938 273-281 Federalist No. 32 (optional)
      2. Discriminatory Measures 282-291, 304-306
      3. Special Case: Subsidies 321-329
      5. Exceptions
         a. Congressional authorization 291-293
         b. Sovereign protectionism 294-301
         c. Market participant 329-336
   B. Privileges and Immunities Clause of Article IV 336-345
IV. Separation of Powers
A. The Authority to Make National Policy
   1. Domestic Affairs 185-199
   2. Foreign Affairs 200-217
B. Congressional Encroachments on Executive’s Domain 223-235
   Federalist No. 51
C. Executive Privilege and Immunities 258-268, Supp. 19-24
D. Impeachment 268-271, Supp. 24-25

V. The Structure of the Constitution’s Protection of Individual Liberties
A. Incorporation 364-372, 409-420, Supp. 32-33
B. State Action
   1. State Action Requirement 1663-1668
   2. Public Functions 1668-1676
   3. Entanglement 1680-1696

VI. Economic Substantive Due Process
A. The Lochner Era 372-383
B. The End of Lochner 383-394
C. Review of Punitive Damages: A Return to Lochner? 394-396

VII. Non-Economic Substantive Due Process
A. Reproductive Freedom 425-441, Supp. 33-34
   442-458
   459-484, Supp. 35-40
B. Family Autonomy 530-560
C. Sexual Activity 501-526
D. Protection against Harm 1696-1700
E. Death 484-500

FINAL EXAM: The final exam consists of two sections, one includes multiple choice questions and the other includes one or two essay questions. In addition, students who volunteer and participate in the classroom discussion on a regular and helpful basis may receive a grade enhancement of one-third a grade in the discretion of the Professor.

LEARNING OUTCOMES: JD students are expected to be able to learn the doctrinal rules applicable for each area of constitutional law; be able to apply those rules to novel or unanticipated factual scenarios; and be able to critically assess the normative validity of those rules, including by articulating and defending alternative interpretations of the relevant constitutional text.

ATTENDANCE/TARDIES: All students are expected to comply with the law school’s attendance policy (i.e., no more than 6 absences in this class this semester). Students may not sign-in on the attendance sheet for another student, and, if you forget to sign-in on a day that you are in attendance, you should consult with the Professor before signing in for that day (i.e., no back-dating of the attendance sheet). Students are also expected to be on time for class; students
who are regularly late to class (or regularly leave class early) may be reported to the Associate Dean for Student Affairs for appropriate action.

**OFFICE HOURS:** Tuesdays, 3:15-4:15. Other days/times by appointment.