

SYLLABUS

REQUIRED TEXTS: Choper, Dorf, Fallon & Schauer, Constitutional Law: Cases, Comments, Questions (13th ed. 2019); 2021 Supplement; and, The Federalist Papers (any edition).

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.

	<u>Pages</u>
I. The Judiciary and the Federal Judicial Power	
A. Judicial Review and the Judicial Power	1-20, Federalist No. 78 21-32
B. Political Questions	32-49
C. Congressional Limits on the Judicial Power	49-61
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
4. Non-Discriminatory Measures	309-321
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 <u>Lochner</u> Era	372-383
B. The End of <u>Lochner</u>	383-394
C. Review of Punitive Damages: A Return to <u>Lochner</u> ?	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.