

Civil Rights and Civil Liberties
GVPT 432
Spring 2021

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This is an introductory course to the study of constitutional rights and liberties. We will explore the constitutional status of such matters as political (and other) speech, school prayer, religion in the public square, abortion, gay rights/same-sex marriage and gender and racial equality. By necessity, this is a survey course. We could spend a semester on each and every one of the subjects listed above (and in fact, I do offer a semester-long course on the First Amendment).

In this course, we will discuss historical and recent Supreme Court holdings with respect to these subjects, but most of our time will be spent applying Supreme Court precedent. Through discussion of a series of hypothetical cases, I hope that you will come to an appreciation of the complexity of civil rights and liberties issues facing us in the 21st century.

Because specialized writing and analysis are the cornerstones of the legal profession, I will host several writing “labs” early in the semester. While this is not a course on legal writing, I will attempt to show you how to analyze hypothetical cases, how to apply precedent, how to construct legal arguments and how to write bench memos and judicial opinions.

Course Requirements:

1. **Class participation:** You should come prepared to discuss the readings in each and every class. You will be evaluated on your participation. Insufficient participation will result in your final grade as determined by the grading criteria being reduced by one grade (*i.e.*, B+ to B) and outstanding participation will be rewarded by a similar increase in your grade. This is necessarily a subjective judgment.
2. **Supreme Court Case Simulation:** Over the course of the semester, everyone will have the opportunity to be an attorney (for a day) and a Supreme Court Justice (for a day). As we discuss cases, you will each assume the role of lawyer for the petitioner or the respondent in one of our hypothetical Supreme Court cases. You (and your lawyer colleagues) will present the facts and key arguments for your client in the case in a mock Supreme Court argument. You will also assume the role of a Supreme Court Justice in another case. You will decide the case and share your judicial analysis with the class. By the end of the first week, we will assign you to a group and each group will in turn be assigned a hypothetical for which the group will serve as counsel and one in which the group will serve as Justices.
3. **Hypothetical Bench Brief/Justice Questions:** All counsel, prior to noon on the day of oral argument will submit on ELMS a typed **outline** of the relevant facts in the case, relevant law, a list of arguments that they will make in support of their client and anticipated counter-arguments. We will provide you will a model for how to do this.

Justices will prepare a list no less than three questions that they are prepared to ask counsel for both parties. The documents will ensure that we have a well-prepared argument for the case. These questions should be submitted to your appropriate undergraduate TA no later than 5pm, the day before oral argument is to occur. Each Justice must ask at least one question on argument day.

4. **Hypothetical Case Opinion:** Everyone will also prepare a judicial opinion in the case for which you serve as justice. Each opinion is due on ELMS two weeks from the day the case is argued. No late opinions will be accepted. The opinion should be as long as is necessary to adequately address the issues in the case but should be no less than 5 pages, single spaced.
5. **Short Papers:** For cases in which you are not serving as counsel or Justice, you must submit three (3) short discussion papers (one to two pages) explaining how you would resolve the legal dispute in four of our hypothetical cases. You will receive either a (√+), a (√), or a (-). A (√) means that you adequately completed the assignment. A (√+) means you exceeded expectations. A (-) means that you failed to meet expectations. But don't focus too much on these grades. Of course, a √+ is preferable to a √- but what I'm really looking for is improvement in these over the

semester. Concentrate on the comments you receive and incorporate them into future papers. Your paper is due on ELMS at the beginning of class on the day we discuss the hypothetical. You may not turn in a one-pager regarding a hypothetical case that has already been argued and you may not turn in a paper for a case in which you are serving as a Justice or counsel. Make sure you turn in your three papers. These will be considered in the un-grading process.

6. **Exams:** There will be a “short” mid-term exam and a final exam. These will test both your substantive knowledge of legal concepts and case materials and your ability to apply law to new factual situations.

(Un)Grading:

This semester we will utilize an “ungrading” system in which we will collaboratively determine your grade for the semester. This approach more appropriately reflects the kind of assessment that you would receive in a working environment. You will maintain a portfolio of your work during the semester and you will do a self-evaluation at the end. I urge everyone to “brief” each of the cases we read each class and include these in your portfolio. I consider effort in reaching my “ungrades” and regular briefing of cases will demonstrate a commitment to success in the course. In your self-assessment, you will be asked to objectively evaluate both the quality of your work and the effort you expended in the course. I will discuss the ungrading process more in class.

Books--Recommended:

Epstein: *Constitutional Law for a Changing America: Rights, Liberties and Justice*, 9th Edition. (but any undergraduate introduction to Civil Rights and Civil Liberties will work.)

Great Web Sites:

- **For transcripts of Supreme Court oral Cases and audio recordings, visit:**

www.oyez.org

- **For copies of case opinions, visit:**

www.law.cornell.edu

Students with Disabilities:

Students with disabilities who are registered with Disability Support Services (301-314-7682) are encouraged to meet with me early in the semester to arrange appropriate academic accommodations.

Inclement Weather:

Exams will be rescheduled for the next class meeting if the university is officially closed because of inclement weather. Similarly, any assignments due should be turned in at the next class meeting. Official closures and delays are announced on the campus website and snow phone line (301-405-SNOW) as well as local radio and TV stations. In order to stay on schedule, if we do have to cancel an in-person class due to weather, we will convene on Zoom.

Religious Holidays:

For any assignment due on a religious holiday, you must make arrangements to submit the assignment **before** your absence.

Late Assignments:

Brief outlines and opinions are due at the **beginning** of the appropriate class. **LATE ARGUMENT OUTLINES OR OPINIONS WILL NOT BE ACCEPTED** unless you have dispensation from me before the due date. **DON'T BE LATE.**

Academic Honesty and Honor Code Pledge:

The University of Maryland, College Park has a nationally recognized Code of Academic Integrity, administered by the Student Honor Council. This Code sets standards for academic integrity at Maryland for all undergraduate and graduate students. As a student you are responsible for upholding these standards for the course. It is very important for you to be aware of the consequences of cheating, fabrication, facilitation and plagiarism. For more information on the Code of Academic Integrity or the Student Honor Council, see <http://www.studenthonorcouncil.umd.edu/whatis.html>.

I take academic honesty very seriously. Plagiarism and any other infractions will be referred for appropriate university judicial proceedings.

Students should write and sign the following statement on the cover page of each paper they submit in this course, "I pledge on my honor that I have not given or received any unauthorized assistance on this assignment."

Course Schedule

(Note: I reserve to revise the schedule or assignments as the semester progresses. Changes will be timely posted on ELMS. It is your responsibility to be aware of any and all schedule changes.)

Introduction

January 25: Introduction

January 30: Law, Morality, the Constitution and the Supreme Court

Cases: *Buck v. Bell*

Brown v. Bd. of Education

February 1: “Incorporation” and Interpretation of the Bill of Rights: Understanding the Fourteenth Amendment

Cases: *Palko v. Connecticut*

Lochner v. NY

U.S. v. Carolene Products (footnote 4)

Political Speech: Public Forum and TPM Analysis (Hypo 1)

February 6: Discussion of Cases

Cases: *Int’l Society for Krishna Consciousness v. Heffron*

US v. Kokinda

Key Case: *Hill v. Colorado*

February 8: Discussion of Hypothetical 1

Fighting (and Disruptive) Words (Hypo 2)

February 13: Discussion of Cases

Cases: *Chaplinsky v. New Hampshire*

Tinker v. Des Moines

Morse v. Frederick

Key Case: *Mahanoy Area School Dist. v. B.L.*

February 15: Discussion of Hypothetical 2

RIGHT TO BEAR ARMS (Hypo 3)

February 20: Discussion of Cases
Cases: *D.C. v. Heller*
Key Case: *Bruen v. NY*

February 22: Discussion of Hypothetical 3

Free Exercise of Religion (Hypo 4)

February 27: Discussion of Cases
Cases: *Wisconsin v. Yoder*;
Employment Div. v. Smith;
Church of the Lukumi Babalu Aye v. City of Hialeah
Key Case: *Burwell v. Hobby Lobby*

March 1: Discussion of Hypothetical 4

Establishment of Religion (Hypo 5)

March 6: Discussion of Establishment Cases
Cases: *Engel v. Vitale*; (skim)
Lemon v. Kurtzman
Lynch v. Donnelly
Van Orden v. Perry
Key Case: *Maryland-National CPPC v. AHA*

March 8: Discussion of Hypothetical 5

Due Process and Criminal Justice (Hypo 6)

March 13: Discussion of Cases
Cases: *Miranda v. Arizona* (skim)
Katz v. U.S.
California v. Ciraolo

Kyllo v. U.S.
Key Case: *U.S. v. Jones*

March 15: Discussion of Hypothetical 6

Spring Break (March 19-March 25)

March 27: Welcome Back: Taking Stock and Mid-Term Review

March 29: Mid-Term Exam

Reproductive Rights (Hypo 7)

April 3: Discussion of Cases

Cases: *Griswold v. Connecticut*
Roe v. Wade
Planned Parenthood v. Casey
Key Case: *Dobbs v. Jackson Health*

April 5: Discussion of Hypo 7

Sex and Marriage (Hypo 8)

April 10: Discussion of Cases

Background Cases: *Bowers v. Hardwick*
Texas v. Laurence
Key Case: *Obergefell v. Hodges*
For additional consideration: Coontz, *Marriage: A History*

April 12: Discussion of Hypothetical 8

Equal Protection: Race (Hypo 9)

April 17: Discussion of Cases

Cases: *Plessy v. Ferguson* (excerpts on ELMS)
Brown v. Bd. of Education;
Bakke v. California
Key Case: *UT v. Fisher (Fisher II)*

April 19: Discussion of Hypothetical 9

Equal Protection: Gender (Hypo 10)

April 24: Discussion of Cases

Cases: *Craig v. Boren*

Key Case: *US v. Virginia*

April 26: Discussion of Hypothetical 10

Civil Rights and Liberties in the 21st Century

May 1: Constitutional Interpretation and Civil Rights
Readings: TBD

May 3: “Deciding:” How to Think About Constitutional Law (and How NOT to Think About Constitutional Law)

Assignment: Prepare a Summary of your position in each of the Hypothetical cases from this semester.

May 8: Concluding Thoughts

May 10: Exam Review

May ?: Final Exam