

Introduction to Constitutional Law—GVPT 432  
Syllabus for Fall 2023

**Note: This is a summary of the more extensive syllabus located at the course website on ELMS. For more detailed information, please contact Dr. Kobren at [mkobren@umd.edu](mailto:mkobren@umd.edu). In the event of a conflict between this document and the website, the website controls.**

Course: Introduction to Constitutional Law (GVPT 431)

Meeting Time: M-W 2:00-3:15 p.m.

Location: Rm. 1120 [Susquehanna Hall](#)

Contact Instructor: [Marty Kobren](#)

Contact UTA: [Olivia Becker](#)

### *Course Introduction*



Pictured above is the actor John Houseman playing the role of Professor Charles Kingsfield, the Harvard Law School's Contracts Law instructor in the 1973 film, *The Paper Chase*. Houseman won an Academy Award and a Golden Globe for his portrayal of this soft-spoken teacher from Hell. Introducing himself and his class, [Kingsfield says:](#)

*We do brain surgery here. You teach yourselves the law, but I train your mind. You come in here with a skull full of mush, and you leave thinking like a lawyer.*

Here's another [clipLinks to an external site.](#) showing an example of Professor Kingsfield in action.

While I'm nowhere near as scary as Professor Kingsfield was in the clip, in this class, I will be trying to do the same thing. I use a gentle version of the Socratic Method Kingsfield describes in the clip. I generally do not lecture. Instead, I ask questions, and you provide answers to them. This will not be an exercise in "Turkey Bingo" in which you make up a bingo card with the names of 24 of your classmates and cross them off when they speak (this works best when there are a few annoying students who are always demanding to be recognized). Instead, everyone will get an assigned seat, and I'll simply ask each student, in order, to answer my questions. Given the size of this class, you can expect to be on the hot seat every three sessions or so. Of course, if you have a question or something to add, I'll be happy to recognize you.

As undergraduates being exposed to the law as a discipline for the first time, I have no expectation that you will leave this course "thinking like a lawyer." That takes a lot of practice, and you simply can't get enough of it here, particularly when none of the other courses you're taking demand the same manner of thinking. All the same, I do hope to expose you to the way lawyers and judges think about the problems with which they are presented so that many of you can begin to decide whether you like the discipline enough to want to consider law school after you graduate (I'm neutral about this; law school is the right choice for some people, but the wrong choice for others). My other goals for you in this course, in no particular order, are as follows:

- Learn how American courts, consistent with democratic principles, have attempted to interpret and apply the vague text of a relatively ancient document to modern problems;
- Learn how to make sensible predictions about the way Supreme Court Justices are likely to think about new problems they are asked to solve;
- Learn something about legal reasoning;
- Learn how to read and brief a Supreme Court case;
- Improve your ability to make convincing arguments;
- Learn how to assess legal arguments offered by others;
- Learn how to assess the quality of Supreme Court majority opinions, concurrences, and dissents.
- Discover basic principles of Constitutional Law;
- Learn something about how the American legal system works;
- Learn how to use and understand basic legal terminology.

Once people get used to the Socratic Method, most people tend to like it. First, it is highly interactive, and it will keep you thinking throughout the class. As you begin to get used to it, you'll notice yourself beginning to anticipate the questions I'll toss at you and at your

classmates. Second, the main focus of the Socratic Method is on learning *how* to think instead of *what* to think. That means that this course is highly apolitical. I can and I will argue both sides of a question persuasively and so whatever your political ideology is, you will get both support and criticism. This, to the consternation of your more partisan friends (and perhaps your parents), will prove to be frustrating because you're probably going to learn how to do the same thing.

There are a number of things you can do to make the most of your experience in this class. I've found that the students who do the best and enjoy the course the most do these things:

- They get over their fear of saying the wrong thing or making mistakes in public. Mistakes are critical to the process of learning; you can't learn if you're unwilling to make mistakes. [I have made a huge number of mistakes in my life](#), and the reason I'm standing in front of you is because I was able to learn from them and move on. If it's any consolation, remember that it is a certainty that a large number of your classmates would have made the same mistake. As a professor, I have a lot more respect for a student who is willing to risk making a mistake than for one who is not.
- They prepare for class thoroughly. Any lawyer will tell you that the key to success in law isn't brilliance; it's the slow, diligent attempt to foresee issues and to consider ways to address them when they arise. This is not a course where you don't have to do the reading or where you can skim the required materials to get the gist of it. Instead, you have to read everything SLOWLY, soaking in the details, considering precisely what the Court said and what it didn't say. For every case assigned, be ready to answer questions like these:
  - Who are the parties to this case? IRL, what are their interests? What has caused the conflict, and why do they need the Court to resolve it for them?
  - What did the parties do or try to do that led them to file or defend the suit? Why didn't they settle the case through negotiation?
  - Are there any key facts that make this case different from other case on the same topic? What facts did the Court seem to care the most about? How would the case be resolved if a key fact changed?
  - Is there a statute involved in this case? If so, what does the statute say?
  - What did the lower courts decide?
  - Did the Supreme Court issue a majority opinion, or was the best the Court could do a plurality decision?
  - Why don't the authors of the dissenting and concurring opinions agree with the majority or plurality opinion?
  - Which of the opinions issued in the case, the majority opinion, the concurrence(s), or the dissent(s) do you think is the most persuasive?
  - Has this case been correctly decided?

- Many of the cases we will study this semester date from 50 to over 200 years ago. Has the case stood the test of time? Are the more recent cases we study likely to stand the test of time?
  - Do you agree with the Court's opinion?
  - Should the Supreme Court have ruled on the case at all, or, instead, should it have left the resolution of the matter to another branch of government?
  - Is the dispute here a legal matter or a political matter?
  - What kind of methodology does the Supreme Court use to resolve the case? Do you find the methodology to be a helpful or valid way of addressing the matter?
  - Is this the kind of matter that is unlikely to be resolvable through democratic processes? Why is resolution through a court the best way to get the matter resolved?
- They show up for every class or almost every class. As I mentioned above, learning to think like a lawyer takes time, attention, and practice. Every class will be an exercise in all of these things, and the more classes you attend, the more comfortable you'll become with the Socratic Method and with the content of the course.
- They take full advantage of all of the resources the course offers. My door is always open to you, and I am hoping you'll take the time to contact me with any questions or observations. **NEVER EVER** apologize for asking me a question. Answering your questions is the job you are paying me to do. Having some contact with me will make it easier to write letters of recommendation on your behalf. In addition, we have an excellent undergraduate teaching assistant who has taken this course before, have been in your shoes, experienced the frustrations you are likely to feel, and probably understands any confusion you might be having with the course. If you don't feel comfortable approaching me, go to her.
- They take what they learn in the course out of the classroom. This semester, we're facilitating the creation of study groups. Study groups are a fixture in law schools because they help students learn the material and prepare for exams. One of the nice things about a study group is that it gives you a small group of people with whom to discuss the course materials. Nobody can think of everything, and if you make use of your study group, collectively, the group can think of almost anything that is likely to come up in class. If study groups aren't your thing, talk about the course content with friends (preferably not on social media) or (gasp) even with your parents.
- They try to see the big picture. Try not to forget that this is a political science or MLAW course, and that the course material is situated within a larger intellectual domain. Lawyers and judges are famous for focusing on the detail of their cases without necessarily worrying about the broader ramifications of what they're arguing. The United States is muddling through a governance crisis that may well be threatening traditional notions of American democracy, citizenship, and fair play. A large portion of that crisis flows from the fact that we, as a polity, have allowed

many of the most crucial decisions affecting our way of life to be made by unelected and unaccountable judges. Try to figure out whether the Court's decision has made things better or worse for American democracy.

### ***What Books Will I Need For This Course?***

*Constitutional Law: Undergraduate Edition, Volume 1 3rd Edition*

Gregory E. Maggs | Peter J. Smith

ISBN: 978-1-68561-468-3

This book is available at the University Bookstore. The book is extremely expensive, unfortunately, though it does a good job of cutting out the extraneous stuff that the Supreme Court had to address in its original opinions and will save you time and effort over reading the original opinions, which are available for free on line. While I don't know what the University Bookstore's price for this book is going to be, the publisher is offering free shipping and a 15% discount to students who register for an account on its website and use the discount code HESTUDENT.

Bring this book to class every day.

*The Most Dangerous Branch: Inside the Supreme Court in the Age of Trump*

David A. Kaplan

ISBN: 9781524759919

This is the book you'll be reviewing. While the review isn't due until the end of the semester, I suggest that you get the book now and begin reading it as we go. It should add some color to what we're going to be discussing in class, and you don't want to have to cram this in at the last minute. I think you'll find the book interesting and enjoyable.

### ***What are the Course Deliverables?***

**1. Attendance and Participation:** Attendance and participation in this course are mandatory and amount to 10% of your final grade. You will check in electronically by responding to a single quiz question with a unique code we will post on the board prior to the start of class (calling an absent friend with the code so he or she can check in without actually being present is a no-no and a serious violation of the University's honor code). I am relatively lenient on what kinds of things will excuse an absence. I'll excuse an absence if (i) you send Olivia a notice via ELMS at least an hour before class stating that you won't be in class; AND (ii) you provide one of

the following excuses: (a) illness or injury; (b) varsity athletic competition; (c) family emergency; (d) internship or employment interview; (e) bona fide religious observance; (f) funeral; (g) traffic or car problem that prevents you from arriving on time for class; or (h) other emergency. Being unprepared for class or needing class time to prepare for another one of your classes will not be excused. Unexcused absences and evidence that you haven't prepared for a class session will count against you. I start off with the assumption that if you are present, you are also prepared. If you are present, but after calling on you, it is clear you aren't prepared, you won't get credit for attendance that day.

**2. Case Briefs:** As a first-year law student, the basic skill you need is the ability to summarize a case in enough detail so that you will be able to discuss it intelligently in class. Briefs have a particular structure that I will go over during one of our first classes. You will find [instructions for writing briefs on ELMS](#) as well as a sample brief I have written on [District of Columbia v. Heller](#). There are going to be two (2) briefs due from you this semester. The first one will be for a case of your choice in accordance with a schedule posted on ELMS.

For the first one,

- I. Use either [ChatGPT 3](#) or Bard (each a "Large Language Model") to create the basic brief
- II. Copy the brief to a Google Document
- III. Using the Google Doc commenting function, mark up the brief, showing mistakes or omissions the Large Language Model made; correct the mistakes or omissions.
- IV. Share a copy of the marked up document with both Olivia and me.
- V. Go to ELMS and provide a link to your work product

The second one will also be a case of your choice in accordance with a schedule posted on ELMS. For this one, do it "old school." Start from scratch and create the brief you would rely on for the class discussion.

Each brief must be completed and either uploaded, composed or linked through ELMS before the start of the class for which the case you have briefed was assigned. Briefs will receive one of three grades. You will get a four (4) if you follow my format and include what Olivia considers to be a sufficient amount of information. You will get a two (2) if you deviate materially from my format or do not include what Olivia considers to be a sufficient amount of information. You will get a zero (0) if you fail to submit your brief on time or otherwise do an awful job on it. We will aggregate your scores on these briefs and scale the total so that it accounts for 10% of your grade.

**3. Brief Spot Check:** Lawyers have to be prepared for everything. In fact, some lawyers see their jobs as being thoroughly prepared for legal battles that may never be fought. To check your preparation, we will spot check four (4) students chosen at random every class to insure that you have briefed the cases required for that day's class. We are just looking to see whether you did enough work on your briefs so that you can participate effectively, and the spot checks will be graded on the same 4-point scale used to grade the briefs. We will pay a

great amount of attention to your comments on the case. Because we are using a random process it is possible that you may be called for Brief Spot Check every class or never. Again, it is my assumption that you are prepared, and so if you are never called, you'll still get full credit for Brief Spot Check. You may use a Large Language Model to help you create these briefs, but you're ultimately responsible for the level of detail in these briefs.

It's a bad idea to avoid the spot checks by being absent! If you are absent, regardless of whether you are chosen for Brief Spot Check, you must submit copies of your briefs for the day to Olivia by email before the scheduled start time of the class. Briefs submitted on a day you are absent will not count toward the total number of briefs you have to submit this semester. If you don't submit all of the required briefs for the day, not only will your absence not be excused, but your grade for Brief Spot Check will be reduced by 10%.

This doesn't have to be miserable. In law school, it is common for students to work in small study groups to share the heavy workload. I encourage you to do this. We will accept briefs written by other students in the class as yours during spot checks, provided that (i) the name of the student who actually prepared the brief is included; (ii) you have received the briefs before the start of class; (iii) the briefs appear in a paper or electronic notebook, organized in such a way as to make it easy for you to find them; (iv) the briefs are of the general quality required; and (v) the comments on the brief are your own.

**4. Book Review:** I have assigned *The Most Dangerous Branch* by David A. Kaplan for you to review. Kaplan's thesis is that over the last two centuries, the Supreme Court has gotten itself involved in public policy disputes that are more properly consigned to Congress, the President or the states, and has done so in a way that poses a threat to the U.S.'s status as a democratic republic. Your book review should address Kaplan's thesis. You should comment on:

- Whether Kaplan is right or wrong;
- Whether the evidence Kaplan presents is persuasive;
- What you think are weaknesses in Kaplan's argument;
- Whether you think the problem Kaplan is addressing is as serious as he believes it is;
- What, if anything, should be done to address the problem Kaplan's book addresses;
- Whether our system of government would work if the Supreme Court did not have the power it has now.

Please bear in mind that I am looking for an argument from you and not a report of what Kaplan wrote. I'm expecting you to support your argument with citations to cases we have discussed in class. You may feel free to cite other cases (we will check these cases to ensure that they say what you claim they say) to support your argument, though I'm not expecting extensive research.

I wouldn't count on a Large Language Model to help you with this. I've tried to get the computer to write reviews of this book, and though what I've gotten was generally coherent, the Large Language Model got stuff wrong, had no opinions about the book, made no real argument, didn't cite any cases, and seemed overly generic.

Your book review should be no less than 1,250 words nor more than 2,500 words. Observing the word length and format requirements will be taken into account when we grade your submission. You must upload your book review to ELMS not later than midnight on **December 8**.

**5. Midterm Exam:** Part of what I want you to learn this semester is how to take a law school exam. Law school exams are nothing like the basic exams you've taken up until this point. Instead of quizzing you about simple factual knowledge or asking you to synthesize an answer from course materials, law school exams give you a problem and ask you to solve it based on your understanding of relevant Supreme Court decisions. A single law school exam question often has multiple problems lurking within it, and you have to spot these problems and address them to respond correctly to the question. There is a particular format for answering these kinds of questions that we're going to try to teach you and force you to use in answering the question. The midterm will be an open book, take home exam. You may collaborate with classmates on this part of the exam. The Midterm Exam will be worth 10% of your grade.

**6. Final Exam:** On or around **December 1** I will distribute the questions for the final exam. The final exam is completely open book. You may use any of the materials covered in class and your notes. You may not use any case that is not listed on the syllabus. We'll give bonus points to students who earn materially higher scores on the Final than they earned on the midterm. The Final Exam will be worth 40% of your grade.

I don't believe that true learning can take place in a vacuum. Part of what I hope you will learn this semester is to think in a way most of you have never had to think before. Part of what there is to think about are the different ways legal problems can be perceived. Part of what you are learning is how to distinguish stronger arguments from weaker ones. For that reason, though you are responsible for what you turn in, I **strongly** suggest that after you get the exam questions, you discuss them thoroughly with your study group before you write. The essay portion of the midterm exam must be uploaded to ELMS by (TBD) by midnight and the final must be uploaded to ELMS not later than Saturday, December 16 by 3:30 p.m. We will deduct points if you submit late or if you do not submit your work through ELMS.

Spelling, grammar, syntax and formatting count, so feel free to have somebody help you proofread before you submit.

### ***A Note About Grading***

I don't like grading. I think it interferes with a student's learning experience because it diverts attention away from learning and focuses it on jumping through arbitrary hoops to earn meaningless points. It also sets up adverse power relationships between students and teachers without providing any offsetting benefit. Grades are useless for providing comparisons between students within classes, in different courses, and in other colleges. Grades don't necessarily measure learning outcomes reliably, they may reward skills and knowledge with which students enter a course, they raise levels of student anxiety, they create competitiveness when cooperation is warranted, and despite conventional wisdom, they don't incentivize



learning or outstanding performance. Because of this, in most other courses I teach, I don't use tests, quizzes, or graded projects.

This course, though, is unlike most of the other courses you've taken so far. The law changes constantly, and so it's futile to try to impart particular knowledge to students. What we knew about the law even two years ago, is completely out of date and basically irrelevant. There are no immutable and enduring principles of constitutional law for you to take home with you after the semester ends.

Instead, what I'm hoping to do this semester is to give you some skills that will help you evaluate current and future arguments about how our system of government works and how it should work in accordance with the scheme set forth in the U.S. Constitution. The way to develop a skill is to practice it over and over again; the more you practice, the better you should get at the skill.

Because the skills component of this course is so important, I've structured the grading system so that it gives you a significant amount of credit for practice and effort. A full 30% of the course grade depends simply on showing up consistently and preparing for class. Another 20% of the course grade depends on writing a book review that shows effort, logical reasoning, marshaling evidence for your argument, and the use of proper and conventional written English. The biggest single component of the course grade depends on a final exam, but your final score will depend, first on how you actually do on it, but second, on whether you subjectively did a better job on the final (thus, demonstrating growth and learning) when we compare it to your midterm exam.

This is a hard course. I know that most of you are aiming for either law school or graduate school after you graduate and that you need a reasonably high GPA to get into the school of your choice. I don't believe in penalizing students for taking a risk on a hard course like this one, and so I try to be as generous as I can be when it comes to grading. The University doesn't define a particular grade distribution for this course, nor does it require me to rank my students; everyone can get an A+, and I'd be extraordinarily happy if everyone did. I expect the grades to skew high in this course, but you're going to have to help me get there by showing up prepared, doing your work, asking for help, taking advantage of the resources we're creating and offering to you, and working cooperatively with your classmates.

Finally, to encourage cooperation and discourage competition, I'm offering the class a **grade bonus** that depends on how the class does as a whole. After we have the midterm exam scores to use as a benchmark, I'm offering to add **10 points** (that's a whole letter grade!) to everyone's final exam score if the median score for the final exceeds the median score for the midterm by 10 points. What that means is that it's in your interest to help your classmates do as well as possible on the final exam. If you're a strong student, try to help somebody else who might be struggling; if you're struggling, work with a stronger student who now has an incentive to help you do well. Your fates are now inextricably intertwined!

### ***Campus Policies***

It is our shared responsibility to know and abide by the University of Maryland's policies that relate to all courses, which include topics like:

- Academic integrity
- Student and instructor conduct
- Accessibility and accommodations
- Attendance and excused absences
- Grades and appeals
- Copyright and intellectual property

Please visit [www.ugst.umd.edu/courserelatedpolicies.html](http://www.ugst.umd.edu/courserelatedpolicies.html) for the Office of Undergraduate Studies' full list of campus-wide policies and follow up with me if you have questions.

### ***Course Policies***

#### **Communication with Olivia or Me:**

Email: If you need to reach out and communicate with me, please email me at [mkobren@umd.edu](mailto:mkobren@umd.edu); you can reach Olivia at [obecker1@terpmail.umd.edu](mailto:obecker1@terpmail.umd.edu). Please DO NOT email us with questions that are easily found in the syllabus or on ELMS (i.e. When is this assignment due? How much is it worth? etc.) but please DO reach out about personal, academic, and intellectual concerns/questions. We will do our best to respond to emails within 24 hours.

ANNOUNCEMENTS: We will send announcements via ELMS messaging. You should make sure that your email & announcement notifications (including changes in assignments and/or due dates) are enabled in ELMS so you do not miss any messages. You should check your email and Canvas/ELMS inbox with regular frequency.

#### **Communication with Peers:**

With a diversity of perspectives and experience, we may find ourselves in disagreement and/or debate with one another. This is a good thing! As such, it is important that we agree to conduct ourselves in a professional manner and that we work together to foster and preserve a classroom environment in which we can respectfully discuss and deliberate on controversial questions.

I encourage you to confidently exercise your right to free speech—bearing in mind, of course, that you will be expected to craft and defend arguments that support your position. Keep in mind, that free speech has its limit and this course is NOT the space for hate speech, harassment, and derogatory language. I will make every reasonable attempt to create an atmosphere in which each student feels comfortable voicing their argument without fear of being personally attacked, mocked, demeaned, or devalued. What happens in class stays in the class, and I'll regard it as a huge breach of trust and course policy for anyone to take anything said during class and publish it in any kind of a forum, whether public, private, IRL, or on-line. We're all trying on ideas in this class and so nothing should be taken as a true indication or opinion of anyone's attitudes, opinions, or beliefs.

Any behavior (including harassment, sexual harassment, and racially and/or culturally derogatory language) that threatens this atmosphere will not be tolerated. Please alert me immediately if you feel threatened, dismissed, or silenced at any point during our semester together and/or if your engagement in discussion has been in some way hindered by the learning environment.

### **Study Groups:**

Study groups are a staple in legal education. They enable students to share the heavy burden of keeping up with the readings and briefing cases. Study groups also provide an out-of-class forum for discussing the course materials, preparing for exams, as well as in providing some social support and connection with the class. After the class enrollment settles down and we know who is in the class, I'll use a random process to assign each of you to a small study group; I'm using a random process to spread the talent and experience around. **You are not required to work with a study group.** Our intention is to facilitate the creation of these groups, particularly since this is a big class and it's not likely anyone knows very many people in it.

### **Emergency Protocols:**

Zoom is a wonderful thing, isn't it? If we are unable to meet on campus for any reason, class will continue on Zoom using my meeting room, which is 955 907 3717. Assume that we will be having class unless we make an announcement that class has been cancelled.

### **Academic Integrity:**

The University's [Code of Academic Integrity](#) is designed to ensure that the principles of academic honesty and integrity are upheld. In accordance with this code, we won't tolerate academic dishonesty. Please ensure that you fully understand this code and its implications because all acts of academic dishonesty will be dealt with in accordance with the provisions of this code. All students are expected to adhere to this Code. It is your responsibility to read it and know what it says so you can remain in compliance.

### **Technology Policy:**

Our modern communication technology is an amazing thing, but it can also distract you and others near you from what we're trying to do in class. I understand that your generation doesn't have much interest in things made of paper, that you're likely to keep your briefs and other notes on line. For that reason you may feel free to bring laptops, tablet computers and cellphones to class and to use them to enhance your learning experience. Please, though, don't use these devices to call or communicate with others, to shop, or to keep up with friends on Facebook, Twitter, Threads, Instagram, TikTok, or YouTube (or any other kind of tube).

### **Participation:**

- Given the interactive style of this class, attendance will be crucial to getting something worthwhile out of this class. Attendance is particularly important because class discussion will be a critical component for your learning.

- Each student is expected to make substantive contributions to the learning experience, and we're expecting you to attend every session.
- Students with a legitimate reason to miss a session should communicate with Olivia or me in advance except in the case of an emergency.
- You should complete all readings and assignments in a timely manner in order to fully participate in class. I suggest that you bring your casebook to class because, no matter how well you have briefed your case, it's likely that you may need to fish something out of a case that you might have overlooked.

### **Course Evaluation:**

Please submit a course evaluation through CourseEvalUM in order to help faculty and administrators improve teaching and learning at Maryland. All information submitted to CourseEvalUM is confidential. Campus will notify you when CourseEvalUM is open for you to complete your evaluations for fall semester courses. Please go directly to the [Course Eval UM website](#) to complete your evaluations. By completing all of your evaluations each semester, you will have the privilege of accessing through Testudo, the evaluation reports for the thousands of courses for which 70% or more students submitted their evaluations.

### **Copyright Notice**

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## **Learning Modules**

[Beginnings](#)

[Judicial Review; Judicial Supremacy](#)

[Limitations on the Court's Power](#)

[The Constitutional Two-step](#)

[One Step Back--The Gilded Age](#)

[Two Steps Forward; Federal Power in the Democratic Era](#)

[Three Steps Back; Federal Power in the Reagan Era](#)

[The Power to Tax and Spend](#)

[Mind Your Own Business!](#)

[The Powers and Immunities of the President](#)

[The President's Power Over Foreign Affairs](#)

[Separation of Powers](#)

[Congressional Control of Federal Officials](#)

## Guardians of the Democratic Process?