



NATIONAL PARALEGAL COLLEGE

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Constitutional Law & Criminal Procedure

PLG-110-2002

Syllabus and Course Guide

The NPC Constitutional Law & Criminal Procedure meets 15 times over the course of the 8-week term in the NPC Interactive classroom. Each session consists of about 60 minutes of online lecture by the course instructor. After the lecture, students may ask questions and make comments on the material being studied.

This class will meet on Tuesdays and Thursdays, beginning on February 4, 2020. Unless otherwise noted, all classes will take place at **4:30 P.M.**, Eastern Time.

Attendance will satisfy the weekly interaction requirement. Classes will be recorded (video and mp3 audio) and may be viewed by students at any time.

To successfully complete the course, each student must satisfactorily complete:

- 5 written assignments
- 3 examinations

Unless an extension has been taken pursuant to the NPC Extensions Policy (see the end of this syllabus), all assignments and exams must be submitted by the course deadline which appears later in this syllabus. No extensions may be taken or granted unless the student has submitted one or more assignments or exams in advance of the original deadline. In addition, extensions are subject to grade penalties and are limited to no more than 30 days from the date of the original deadline.

Please note that students are strongly encouraged to do their work as the course progresses rather than waiting for the days or weeks before the deadline to do all of their work. It is also critically important that students realize that:

1. A grade of "Incomplete" is the same as an "F" and is a failing grade.
2. A grade of "Incomplete" will result in a reduction in the student's grade point average.

3. Student may have to pay to re-take or replace a course for which a grade of Incomplete is assigned.
4. Two consecutive Incompletes may subject the student to dismissal from the college under NPC's chronic incomplete policy.
5. Students with a GPA of under 2.0 are not eligible to receive federal financial aid and cannot graduate until their GPA is at or above 2.0.

If a student is having trouble completing the course, the student is strongly encouraged to contact his or her student mentor or teacher as early as possible.

Please note also that:

- A student who receives an incomplete on his or her first course may be dismissed from NPC.
- A student who fails to complete at least one weekly interaction during the first 14 days of the course will automatically be withdrawn from the course per NPC policy. The student may re-join the class by prompt notification to NPC and by prompt completion of an interaction shortly thereafter.

INSTRUCTORS:

The instructors for this course are:

Lecturers:

- Jeremy Rovinsky (jeremy@nationalparalegal.edu)

Grader:

- Michael C. Jones (michael.c.jones@hotmail.com)

COURSE DESCRIPTION:

Although concepts in constitutional law do not often manifest themselves in the everyday practice of law, a basic understanding of the foundation on which our entire legal system is built is vital to a student's legal education. This course will provide our students with a general understanding of the major issues in constitutional law, including the separation of powers between the executive, legislative and judicial branches of the federal government; federalism and states' rights, the concept of interstate commerce; freedom of speech (the First Amendment); substantive and procedural due process; the equal protection clause; and various areas of discrimination.

Perhaps the portions of the Constitution most relevant to the everyday practice of law are those sections of the Bill of Rights which deal with criminal procedure and litigation. Therefore, this course will especially focus on the rights of a criminal defendant. The areas to be highlighted will include: the Fourth Amendment's protection against unreasonable searches and seizures by

the police; the Fifth and Fourteenth Amendments' guarantees of "due process" for an alleged criminal; the Sixth Amendment's guarantee of the right to counsel along with the landmark case of *Miranda v. Arizona*; and the Eighth Amendment's prohibition of cruel and unusual punishment.

COURSE OBJECTIVES:

At the completion of this course, the student should be able to:

- Explain the concept of separation of powers.
- Articulate the standards the courts use in determining whether the government may make classifications that treat people differently from one another.
- Determine whether a claim of government deprivation of civil rights is likely to succeed.
- Differentiate between "searches" that are regulated by the Fourth Amendment and police actions that are not considered searches and are thus not restricted by the Amendment.
- Determine whether a statement given by a suspect was in response to a proper Miranda "interrogation".
- Determine whether a government regulation impacting religion violates the First Amendment.
- Distinguish between government actions satisfy procedural due process requirements and those that don't.
- Explain what kinds of speech are and are not protected under the First Amendment.
- Describe the significance of the Commerce Clause and the latitude it affords Congress to legislate.
- Articulate the elements necessary for obtaining a search warrant.

READING ASSIGNMENTS:

All reading assignments refer to the NPC courseware, including the interactions attached to each subchapter. Cases and/or statutes that are specifically mentioned in the syllabus are required reading. The texts of these cases and/or statutes may be accessed directly from the courseware. In addition to the assigned courseware and cases, students should familiarize themselves with the various legal documents listed for each lecture. These documents can be found on the “Documents and Slides” page on the NPC student website. Some, but not all, of these documents will be discussed in class. Reading assignments for each class should be completed prior to the class.

In addition to the courseware’s electronic form, you may also order a book version of the courseware that includes:

- 1) The courseware**
- 2) All lectures slides**
- 3) Selected provisions from the Constitution of the United States**

You may order this book at: <http://www.freewebstore.org/npc-courseware-books/>

School Virtual Library

All NPC students are encouraged to take advantage of the NPC virtual library, which can be accessed from the “course materials” page on the student menu or directly through this link: <http://nationalparalegal.edu/Students/VirtualLibrary.aspx>.

The NPC virtual library gives students access to Lexis Advance, which is one of the premier online legal databases in the world. It is expected that most legal research can and should be done through Lexis Advance. Online tutorials in the use of Lexis Advance are available on the lower right portion of the default login screen for Lexis Advance.

NPC also subscribes to the Library Information Resources Network (LIRN), which allows our students access to scores of databases containing hundreds of thousands of academic articles and publications. For research that is not legal in nature (for example, for business and general education courses), it is anticipated that students will use LIRN to access reliable academic sources for research papers. Online training in the use of LIRN resources is available here: [Library Information Resources Network](#).

NPC students also have access to Computer Assisted Legal Instruction (CALI) lessons. Unless assigned in the course syllabus, these are optional, but can be very helpful.

WRITTEN ASSIGNMENTS:

At the outset of the course, five assignments will be posted on the “assignments and exams” page. The 5 assignments will cumulatively count for 40% of the student’s grade for the course.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the NPC student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Each submitted assignment will be graded on the following scale:

4 - Excellent

3 - Good

2 – Satisfactory

1 – Poor

0 – Not acceptable (must resubmit)

(Half-points may also be awarded in assignment grading.)

Please see the “Assignment Grading Rubric” (the next page of this syllabus) for more detailed information as to how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

For more information on assignments, please see the *NPC Student Handbook*.

To the extent possible, it is recommended that students complete the assignments as the course proceeds rather than waiting until after the course ends.

Assignment Grading Rubric

Factor	4 (Excellent)	3(Good)	2(Satisfactory)	1 (Poor)	0 (no credit)
Thoroughness	Answers all questions in the exercise completely and in the appropriate order.	Answers all questions in the exercise but not completely and/or not in the appropriate order.	Answers most of the questions in the exercise but not completely and/or not in the appropriate order.	Does not answer many of the questions in the exercise but does make some reasonable effort to do so.	Makes little or no reasonable effort to answer the questions posed in the assignment.
Demonstrates Understanding of the Assignment and has come to an appropriate conclusion	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the student comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported by the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
Documentation/ Legal research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)	Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.	Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.	Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.	Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.	Student has not cited any legal authorities or has cited authorities that are irrelevant.
Organization	Essay is organized very well; the reader can clearly understand where the essay is going at all points and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.	Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.	Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.	Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.	Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.
Critical Thinking and Analysis	Shows excellent critical thinking and analysis. The student was able to apply the cited law to the facts of the given case in a clear and convincing manner.	Shows good critical thinking and analysis. The student's points are well argued and well supported.	Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.	Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.	Shows no effort at critical thinking or analysis. The student's points make no sense.

Credit may also be taken off for poor spelling or grammar.

EXAMINATIONS:

Examinations will be posted on the NPC website when indicated on the syllabus of the course. The examinations consist entirely of “short essay” questions. The 3 examinations will cumulatively count for 60% of the student’s course grade.

Examinations are non-cumulative; they cover only the material that was covered since the previous examination. The instructor will provide specific information regarding the content of each examination, as the examination time approaches.

All examinations are timed. A student may begin the examination any time after it is posted to the NPC website. Once begun, the examination must be completed within 4 hours.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each examination question, full credit will be awarded if the student:

- 1) Correctly identifies the legal issue(s) presented by the question
- 2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student’s answer comes to an “incorrect” conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)
- 3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

Please note that, even if not directly stated in the question, you must give reasons for your answers to open ended questions. One word answers such as “yes” or “no” or answers that merely restate the question without explaining the answer given will not be credited.

The following factors are generally NOT taken into account in grading examinations:

Legal research: Although research is a key component of assignments, examinations are graded on the student’s knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student’s answer): Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would rather see the students spend their time spotting legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

For more information on examinations, please see the *NPC Student Handbook*.

To the extent possible, it is recommended that students complete the exams as the course proceeds rather than waiting until after the course ends.

Early Assignment Submission Incentive Policy

NPC encourages students to submit their assignments as early as possible. In order to facilitate early submissions, students are advised that in exchange for submitting assignments in the first six weeks of the course, they will be awarded the opportunity to re-do or fix up an assignment after it is graded in order to increase the grade.

The following limitations apply:

1. When resubmitting an assignment, a student will only be able to increase his or her grade to a maximum of 3 or by one full point, whichever is greater. For example, if a student submits an assignment within the first six weeks of the course and receives a 1.5 or a 2.0, the student may make corrections suggested by the instructor and can potentially raise the grade to a maximum of 3. A student who initially receives a grade of 2.5 may raise the grade as high as 3.5 with a resubmission.
2. A student may exercise this option up to two (2) times per course.
3. Students are not guaranteed the maximum increase if their corrections do not merit such a change. The grader has the discretion to award a smaller or no increase if the student does not follow the grader's feedback.

To resubmit an assignment under this policy, please contact the course grader.

The early assignment submission deadline is Sunday, March 15, 2020 at 11:59 PM EASTERN TIME; that's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.

NPC STUDENT MENTOR

Each NPC student is assigned a student mentor upon enrollment. Your student mentor is a resource that can and should be drawn on if you need academic assistance. This includes advice on studying, help with assignments, general academic questions, etc. You should have received an email from your student mentor upon enrollment. If you have not received such an email or do not know who your student mentor is, please contact Anne Lewis at anne@nationalparalegal.edu.

NPC PLAGIARISM POLICY

All work done by NPC students on assignments, examinations and research projects is expected to be their own work. Quoting other sources as part of analyzing a subject is desirable and necessary in many cases. However, when other sources are quoted or used, they must be properly attributed to the original sources. This applies to direct quotes of sources and to paraphrasing other sources or using ideas obtained from other sources even if the exact text it not used.

Plagiarism means using the materials of others without appropriately citing the source and is an academic offense.

Under the NPC plagiarism policy, a student may not, as part of any assignment or exam submission:

- 1) Quote any text from any other source without:
 - a) putting quotation marks around the quoted material;
 - AND
 - b) appropriately citing the source of the quote.
- 2) Pass off the work of another as his or her own, even if the student does not directly quote from the other source.

Please note that the NPC plagiarism policy does not mean that you cannot quote language from the courseware, textbook or slides as part of an answer to a question on an exam. These are resources that are meant to be used on an exam when applied in an appropriate manner. However, quoting any source *without attribution* is plagiarism.

In addition, NPC students may not share their completed work, answer keys, or sample answers which they have obtained by any method with any other student. Students may NOT upload any sample answer (whether written by themselves or any other person) to any publicly available website or database. **Any student who uploads a sample assignment or exam answer to a publicly available website or database shall be disciplined in a manner to be determined by the school Dean, up to and including expulsion from the college.**

For more information regarding the NPC Plagiarism Policy, penalties and due process rights where plagiarism is alleged, please see the NPC Plagiarism Policy at:

<http://nationalparalegal.edu/pages/PlagiarismPolicy.pdf>

NPC COURSE MESSAGE BOARDS

All students are encouraged to post and participate in course message board discussions. The message boards are an excellent way to "meet" and communicate with other students and the

instructors, graders and mentors. To find the course message boards, click on message boards and scroll to the bottom.

WEEKLY INTERACTION REQUIREMENT

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least once during each week, either:

- 1) Attend a live lecture and take and pass a short quiz given during class (where applicable)
OR
- 2) Submit at least one assignment
OR
- 3) Take at least one examination
OR
- 4) Answer a weekly “interaction” question or questions that will be posted on the “Assignments and Exams” page.

The weekly “interaction” question(s) will be straightforward and will cover material covered in class each week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

The student’s response (which is necessary only if the student does not attend a live lecture or take an exam or submit an assignment in the given week) will be graded on a pass/fail basis. The interaction questions will be posted no later than Monday of each week and must be answered on or before the following Sunday.

Any student who does not fulfill this requirement during a given week may receive a reduction in his or her over-all grade of 2 percentage points (10 raw points).

Please also note that a student who does not fulfill an interaction during the first two weeks of a course will be automatically withdrawn from that course, as it will be assumed that the student who does not interact during the first two weeks has no intention of attending the course. The student may re-join the class by prompt notification to NPC and by prompt completion of an interaction shortly thereafter.

If an emergency prevents attendance in this period, please email Academic Support (academicsupport@nationalparalegal.edu) as soon as possible.

Fulfilling the weekly interaction requirement is particularly important for students receiving financial aid. Federal regulations require the school to withdraw students from financial aid who go 14 consecutive days without fulfilling an interaction requirement and to return any outstanding financial aid money to the government unless the student interacts with the school prior to the time that the withdrawal is completed. If you are unable to fulfill a weekly interaction requirement, it is critical that you stay in contact with the school so that other arrangements can be made.

COURSE GRADES

The following formula will be used to calculate final grades

$$\text{Cumulative exam scores} + (\text{assignment points} \times 10) = \text{raw score}$$

Because exams are worth up to 100 points and assignments up to 4 points each, the maximum raw score is 500. 10 raw points (2% of the raw point total) may be deducted for each missed weekly interaction.

Extra credit may be available for certain in class activities, high class participation and high message board participation, as may be announced by the instructor. Penalties for missed weekly interactions and/or for extensions are applied at the discretion of the instructor and/or the administration of NPC.

The following conversion chart is then applied based on the total raw points you have earned:

>474	=	A+
445-474	=	A
420-444	=	A-
395-419	=	B+
365-394	=	B
340-364	=	B-
315-339	=	C+
285-314	=	C
260-284	=	C-
230-259	=	D
<230	=	F

OPTIONAL STUDY SESSIONS

In addition to the 15 classes listed below, instructors and/or graders will run 1 or 2 additional study sessions to discuss assignments and/or the course materials. Attendance and participation in these sessions is optional and they will be recorded for those who cannot make it to the live sessions.

Please keep an eye on the course message boards to details as to when these will be held.

All examinations and assignments are due no later than Sunday, April 26, 2020 at 11:59 PM EASTERN TIME; that's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.

Please see the end of this syllabus for a note on NPC course extensions policy!

Lecture and reading assignments schedule

CLASS ONE

Tuesday, February 4, 2020

In this first class, we will acquaint ourselves with the basic principles of American government and constitutional law. We will begin with an examination of what it means to have a federal system of government, and how the Constitution divides power between the national and state governments as well as between the branches of the national government. We will begin looking at federal power by analyzing the powers of Congress via the various clauses in Article I, Section 8 of the Constitution and the various enforcement clauses of the Amendments. We will save the “commerce clause” however, for later in the course.

Courseware Reading:

Chapter 1: Federalism & Separation of Powers

A. What is Federalism?

B. Congressional Powers

Cases and Statutes:

United States Constitution, Article I, Section 8

This is the section of the Constitution that lays out Congress’ sources of power. Keep in mind that before any law can be passed, the power to legislate in that area must have been given to Congress by the Constitution.

McCulloch v. Maryland

This seminal case established the supremacy of the federal government over the state governments by disallowing state taxation of a federal entity. It also confirmed federal Congressional power to do things that were only tangentially related to the carrying out of its enumerated powers.

Suggested Videos:

<https://lawshelf.com/videos/entry/the-american-system-of-government-separation-of-powers>

<https://lawshelf.com/videos/entry/sources-of-law-in-the-united-states>

CLASS TWO

Thursday, February 6, 2020

Tonight, we will continue our discussion of federal power by looking at the power of the executive and judicial branches of our government. We will discuss the President's powers both in relation to foreign and domestic affairs. We will then look at the federal court system, including the Supreme Court's all important power of "judicial review."

Courseware Reading:

Chapter 1: Federalism & Separation of Powers

C. Presidential Powers

D. Judicial Review

Cases and Statutes:

Marbury v. Madison

This case established the concept of judicial review and it set the important precedent that a court (especially the Supreme Court) can declare the actions of another branch of government to be "unconstitutional."

Suggested Video (helpful for assignment 1):

<https://lawshelf.com/videos/entry/congressional-and-presidential-war-powers-under-the-us-constitution>

Assignment 1 can be completed at this point.

CLASS THREE: (Assignment/ Lexis walkthrough) Tuesday, February 11, 2020

This class will consist of a Lexis tutorial/ assignment walkthrough. The instructor will use a research assignment from a past or current course to demonstrate the manner in which an assignment should be researched and composed.

The instructor will walk the students through the various Lexis databases and explain to students how to most efficiently use the Lexis system to complete research assignments. Various general aspects of navigating Lexis, including Shepardizing, seeking and finding appropriate search databases, getting a document by citation, etc., may be explored.

The Instructor will also discuss how to most effectively plan, outline, organize and draft research assignments. Model answers and/or past student submissions may be used to illustrate what a “4” assignment looks like and how to compose one.

CLASS FOUR

Thursday, February 13, 2020

We will devote this class to examining the Commerce Clause, which is the constitutional provision that largely explains how Congress enjoys vast legislative authority despite its powers being technically limited to a few areas of law. We will explore how the Great Depression breathed life into the Commerce Clause, and how assertions of states' rights in the last twenty years have led to a slight diminution of the Clause's impact.

Courseware Reading:

Chapter 2: Congress's Power to Regulate Interstate Commerce

A. The Commerce Clause

B. "Substantial Effects" Commerce Clause power

Cases and Statutes:

Gibbons v. Ogden

Written by the great Chief Justice John Marshall, this case established and discussed the expansive powers afforded to the federal government by the all-important "interstate commerce" clause in Article I, Section 8, Clause 3 of the Constitution.

United States v. Lopez

This 1995 decision put limits on the Commerce Clause for the first time in the modern era. The Supreme Court put boundaries on the scope of the power allowed to the federal government by the Constitution.

CLASS FIVE

Tuesday, February 18, 2020

In this class, we will examine what has come to be known as the “Dormant Commerce Clause,” a judicial doctrine that limits a state’s power to regulate commerce even in areas where Congress has taken no action. This is done to prevent states from interfering too much with interstate commerce. We will also discuss the very closely related doctrine of the “privileges and immunities” clause of Article IV of the Constitution, which prevents states from discriminating against people from other states.

Courseware Reading:

Chapter 2: Congress’s Power to Regulate Interstate Commerce

C. The Dormant Commerce Clause

D. The Privileges and Immunities Clause

Suggested videos:

<https://lawshelf.com/blog/post/federal-judge-in-texas-strikes-down-obamacare>

Assignment 2 can be completed at this point.

In this class, we will begin our discussion of civil rights guaranteed by the Constitution. This class will begin our examination of the Constitution's Due Process Clause, a vaguely worded provision that the Supreme Court has interpreted to be the source of many important individual rights. We will first explore what are called rights of substantive due process, which used to be considered primarily economic but have for the last eighty years been understood to relate to matters of personal autonomy and family life.

Courseware Reading:

Chapter 3: Due Process of Law

A. Substantive Due Process: Economic Regulation

B. Substantive Due Process: Fundamental Rights

Cases and Statutes:U.S. Constitution: Fourteenth Amendment

The Fourteenth Amendment must be the starting point for due process for equal protection and due process analyses because it is the source of the important "equal protection" and "due process" clauses.

Griswold v. Connecticut

This case will be discussed for its role as the grandfather of all the right-to-privacy cases, as this was the first case that established privacy as a Constitutional right. Many famous constitutional law cases, including those on abortion, gay rights and the right to make one's own healthcare decisions, are, in reality, progeny of Griswold.

Examination # 1 will be posted at this point.

CLASS SEVEN

Tuesday, February 25, 2020

Tonight we will continue our discussion of the substantive due process rules. We will look at specific rights such as the right to refuse healthcare, certain aspects of the right to privacy and we will look at the always controversial topic of abortion and the status under Supreme Court law, of the right to choose an abortion. We will conclude by looking at the other side of due process rights: those that require government to follow fair procedures in limiting individual freedom.

Courseware Reading:

Chapter 3: Due Process of Law

C. Procedural Due Process

Cases and Statutes:

Planned Parenthood of S.E. Pennsylvania v. Casey

Although Roe v. Wade is often thought of as the arbiter of constitutional law with respect to abortion, in reality, this 1992 case is the Court's most recent definitive statement on the right to choose an abortion and how far that right extends.

Documents for Review:

Complaint by Prisoners under the Civil Rights Act

CLASS EIGHT

Thursday, February 27, 2020

We will examine the Constitution's Equal Protection Clause, which in simplest terms requires the government to treat similarly situated people equally. We will begin with an overview of the historical circumstances leading to the Clause's creation, and how its significance has expanded over time. We will look at the three tiers of review and the classifications to which each is applied.

Courseware Reading:

Chapter 4: Equal Protection

A. History & Levels of Review

B. Nonsuspect Classifications

Cases and Statutes:

U.S. Constitution: Fourteenth Amendment

United States v. Virginia

Known as the "VMI" case, this case is a classic example of a Supreme Court discussion of the equal protection clause. This is an excellent case to analyze because it presents an interesting balancing test between competing interests in its analysis and contains a vigorous dissent.

CLASS NINE

Tuesday, March 3, 2020

In this class, we will continue our equal protection discussion. We will look at suspect classifications and the differences between discriminatory intent and discriminatory effect. We will look at famous race discrimination cases like Brown v. Board of Education of Kansas and discuss the effects of these seminal cases to this day. We will also see how the Clause has been interpreted to permit certain kinds of race- and sex-conscious affirmative action programs.

Courseware Reading:

Chapter 4: Equal Protection

C. Suspect Classifications Based on Race

D. Fundamental Rights and the Equal Protection Clause

Cases and Statutes:

Korematsu v. United States

This famous (and, in many eyes, infamous) case allowed the internment of Japanese Americans during World War II. The case is a very important one to analyze because it demonstrates that, under some circumstances, even the most invidious types of discrimination can sometimes be justified by circumstances.

Documents for Review:

- Civil Rights Complaint under 42 U.S.C. Sections 1983 and 1985
- Civil Rights Complaint Form- U.S. Attorney's Office

Assignment 3 can be completed at this point.

We will focus in the class on the all-important rights of freedom of speech and freedom of the press under the First Amendment to the Constitution. We will begin with the freedom of expression, learning how courts rarely allow the government to suppress expression because of the ideas it may convey. We will then examine the situations in which government may regulate expression because of its content or means of delivery. Also, we will discuss various types of speech that are not protected under the First Amendment or which are only protected to a lesser extent.

Courseware Reading:

Chapter 5: Freedom of Expression & Religion

A. Freedom of Expression

B. Substantive & Procedural Limits on Expression

Cases and Statutes:Brandenburg v. Ohio

Although a much earlier case established the “clear and present danger” rule for “dangerous” speech, this case represents the modern Supreme Court rule on that subject. It is important to analyze the “imminent lawless action” standard that was established by this case and how it differs from the “clear and present danger” rule that it replaced.

Suggested Videos:

<https://lawshelf.com/videos/entry/constitutional-law-and-the-first-amendment-freedom-of-speech>

<https://lawshelf.com/videos/entry/freedom-of-speech-exceptions-categories-of-speech-not-protected>

Assignment 4 can be completed at this point.

NOTE: THERE WILL BE NO CLASS TUESDAY, MARCH 10

CLASS ELEVEN

Thursday, March 12, 2020

This class will feature an exploration of the freedom of religion clauses of the First Amendment. We will look at the “establishment” clause, examining how government may interact with religious groups and the extent to which religion is allowed in government sponsored activities. We will also look at the “free exercise” clause and the limits on the government in passing laws or taking actions that limit people’s right to practice their religion.

Courseware Reading:

Chapter 5: Freedom of Expression & Religion

C. The Establishment Clause

D. The Free Exercise Clause

Cases and Statutes:

Lemon v. Kurtzman

This case is important to read and discuss because it presents an excellent synopsis of the way in which courts must analyze whether a government program or action is considered an “establishment” of religion, and thus a First Amendment violation.

Suggested Videos:

<https://lawshelf.com/videos/entry/the-free-exercise-clause>

<https://lawshelf.com/videos/entry/do-bible-lessons-in-schools-violate-the-first-amendments-establishment-of-religion-clause>

Examination # 2 will be posted at this point.

The early assignment submission deadline is Sunday, March 15, 2020 at 11:59 PM EASTERN TIME; that’s EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.

CLASS TWELVE

Tuesday, March 17, 2020 – this class will be given by Susan Israel

We will shift focus here to concentrate on how the Constitution applies to regulate the criminal law. The emphasis of the remaining classes will therefore be on the constitutional rights of criminal suspects and defendants. We will devote this class to an examination of the Fourth Amendment's prohibition on unreasonable government searches and seizures. Starting with the rule that evidence obtained in violation of the Amendment may not be used against a criminal defendant, we will explore the matter of just what constitutes a police search or seizure. We will then examine the two main prerequisites for authorizing such state action: that probable cause exists to undertake the search or seizure, and that the police obtain a warrant before taking action.

Courseware Reading:

Chapter 6: Protection from unreasonable searches and seizures

- A. The Exclusionary Rule
- B. Searches and seizures defined
- C. Probable Cause

Cases and Statutes:

U.S. Constitution: Fourth Amendment

The Fourth Amendment forbids unreasonable searches and seizures and it requires that police have probable cause before obtaining a warrant to conduct searches. Clearly, any discussion of criminal procedure must begin with a reading of the Fourth Amendment.

Mapp v. Ohio

This seminal case announced that the “exclusionary rule” applied to state police searches. This means that any evidence gained through an illegal search cannot be used in a court of law against the victim of the bad search. In reading the case, note the lengths that the Court goes to defend its decisions based on practical and theoretical arguments.

Wong Sun v. United States

An important corollary to the exclusionary rule is the rule announced in this case. The Supreme Court here held that any evidence obtained even indirectly because of an illegal search must be excluded from court. This is known as the “fruit of the poisonous tree” rule. Analysis of the rule and a discussion as to what extent it hampers law enforcement efforts are important aspects of practical criminal procedure.

Documents for Review:

- Michigan Miscellaneous Felony Forms
- Arrest Order-State

Suggested Videos:

<https://lawshelf.com/videos/entry/reasonable-expectation-of-privacy>

<https://lawshelf.com/videos/entry/the-fourth-amendment-the-requirement-of-probable-cause>

CLASS THIRTEEN Thursday, March 19, 2020 – this class will be given by Susan Israel

In this class, we will continue our discussion of searches and seizures. We will focus on the warrant requirement for a police search and the exceptions to the general rule that a warrant is required. We will discuss who may issue a warrant and what circumstances a warrant must be based upon to be valid. We will finish by focusing on the various “exigent circumstances” in which a warrant is not required for a search.

Courseware Reading:

Chapter 6: Protection from unreasonable searches and seizures

D. The Warrant Requirement

E. Exceptions to the Warrant Requirement

Cases and Statutes:

Terry v. Ohio

In this case, the Supreme Court announced the “stop and frisk” rule. The case allows police officers to stop and frisk a potentially armed and dangerous suspect even without a warrant and based on a showing of less than the normally required “probable cause” in some cases. This case should be analyzed as an important check on the earlier cases that had broadened the protections afforded to suspects by the federal Constitution.

Documents for Review:

- Affidavit for Search Warrant -State

- Arrest Warrant - State

Suggested Videos:

<https://lawshelf.com/videos/entry/fourth-amendment-exceptions-to-the-warrant-requirement-part-i>

<https://lawshelf.com/videos/entry/fourth-amendment-warrant-requirement-exceptions-part-ii>

Assignment 5 can be completed at this point.

We will examine here how the police may behave in questioning people. Using *Miranda v. Arizona* as our focal point, we will explore precisely what the police must do to inform a person of his or her constitutional rights before commencing a custodial interrogation. We will then examine some of the situations in which the Miranda protection does not apply, such as when a person is not in police custody, no actual interrogation has occurred, or the person has waived his or her rights.

Courseware Reading:

Chapter 7: Police Interrogation

- A. Miranda v. Arizona
- B. Custody defined
- C. Interrogation defined
- D. Waiver of right

Cases and Statutes:United States Constitution: Fifth Amendment

The Fifth Amendment contains many famous and important constitutional rights guaranteed to criminal defendants, such as the right to remain silent, the right to due process and the right to avoid having to face double jeopardy.

United States Constitution: Sixth Amendment

The Sixth Amendment enumerates many of the rights that the criminal defendant has at trial itself, including the all important right to the assistance of counsel.

Miranda v. Arizona

One of the most famous cases in Supreme Court history, this case mandated that police officers who are arresting a suspect advise him or her of the rights to remain silent and the assistance of counsel. Students reading the case should think about whether it is clear that the Fifth Amendment really requires this warning and whether the Court's arguments that the warnings are necessary to protect the Fifth Amendment are persuasive.

Rhode Island v. Innis

If Miranda is mostly about the theory of what is necessary to protect the Fifth Amendment rights of suspects, then this case is about the practical application of Miranda. This case discusses the very practical question of: What is considered an "interrogation" for Miranda purposes?

Documents for Review:

- Affidavit of Indigency- State
- Appointment of Counsel for Indigent - Federal
- Notice of Appearance in Criminal Case - Federal
- Subpoena in a Criminal Case - Federal
- Voucher for Experts Services for Indigents – Federal

We will conclude this course with an examination of a criminal defendant's constitutional rights at trial. Beginning with a defendant's right to a competent attorney, we will examine the rights to confront adverse evidence, to compel the production of favorable evidence, and to not be forced to incriminate oneself. We will also explore what showing of proof is required to convict a defendant, and how a convicted person may not be sentenced to cruel and unusual punishment.

Courseware Reading:

Chapter 8: Rights at trial

- A. The right to effective assistance of counsel
- B. The Confrontation Clause
- C. The right to compulsory process
- D. Burden of proof
- E. Protection from cruel and unusual punishment

Cases and Statutes:United States Constitution: Eighth Amendment

This Amendment contains the famous Constitutional ban on "cruel and unusual punishment" that mandates that sentences be proportional to the crimes committed and that has been used time and again to challenge the death penalty.

Maryland v. Craig

Reading and discussing this case is one of the best ways to analyze the important balancing test that must be performed in a criminal case between the defendant's right to a fair trial and the interest in protecting the victim. This case decides the fascinating issue of whether allowing an alleged victim of child abuse to testify without the defendant in the room (if the child is scared of the defendant) violates the defendant's right to "confront" his accuser. Also, if you get the chance, read Justice Scalia's thought provoking dissent to the allowance of this procedure, in which he observes "Perhaps that is a procedure today's society desires; perhaps (though I doubt it) it is even a fair procedure; but it is assuredly not a procedure permitted by the Constitution."

Gregg v. Georgia

After the Supreme Court temporarily invalidated the death penalty "as it was then applied" in 1972, in *Furman v. Georgia*, the Supreme Court decided this case, which reinstated the death penalty, but set strict guidelines for its "execution."

Documents for Review:

- Deposition Subpoena in a Criminal Case - Federal
- Witness Protection Order - State

CLASS FIFTEEN, continued

Documents for Review:

- Waiver of Trial by Jury- State
- Voir Dire Checklist for Criminal Trials - Federal
- Jury Questionnaire
- Notice of Appeal in a Criminal Case - Federal
- Motion to Vacate Sentence by a Person in Federal Custody
- Motion to Vacate Judgment by a Person in Federal Custody
- Petition for Writ of Habeas Corpus by a Person in Federal Custody
- Petition for Writ of Habeas Corpus by a Person in State Custody
- Application to Proceed In Forma Pauperus

Suggested Video:

<https://lawshelf.com/videos/entry/defendants-rights-to-exculpatory-evidence-brady-v-maryland>

Examination # 3 will be posted at this point.

All examinations and assignments are due no later than Sunday, April 26, 2020, at 11:59 PM EASTERN TIME; that's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.

NPC EXTENSIONS POLICY

- 1) Extensions that conform to the rules below may be requested from the “Assignments and Exams” page on the NPC student website.**
- 2) No extensions are possible unless the student has first submitted at least one assignment or examination by the course deadline.**
- 3) The maximum possible extension allowed under the NPC system are as follows:**

- A student who has submitted one assignment or exam may take an extension of up to seven (7) days.
- A student who has submitted two assignments or exams (or any combination) may take an extension of up to seven (7) additional days (14 days total).
- A student who has submitted three assignments or exams (or any combination) may take an extension of up to seven (7) additional days (21 days total).
- A student who has submitted four assignments or exams (or any combination) may take an extension of up to seven (7) additional days (28 days total).
- A student who has submitted five assignments or exams (or any combination) may take an extension of up to two (2) additional days (30 days total).
- No extensions of more than thirty (30) days beyond the deadline are possible for any reason at all.

4) Requested extensions are granted automatically. It is not necessary to give any reason for the request. However, for each day of extension you request, you will be penalized 3 raw points (of 500 that determine your final grade). This accounts for 0.6% of your course grade, per day of extension. This is necessary to compensate for the advantage that students who take more time to do their work enjoy over those who complete their work on time. This also means that a short extension (e.g., a day or two) is unlikely to affect your grade, but a long extension (e.g., two weeks) is guaranteed to affect your grade.

5) The penalty referenced in Paragraph 4 may be waived by the dean in extreme cases only. Extreme cases include circumstances beyond the control of the student that caused the student to be unable to complete work for *a significant period of time*. Circumstances such as being busy at work or at home, vacations, family occasions or power or internet outages lasting a few days, are foreseeable life circumstances. Extensions may be taken for these reasons (or, for that matter, for any reason at all), but the grade penalty discussed above applies. However, please note that the course deadline cannot be extended more than 30 days for any reason at all.