

**UConn–HUGS Summer Program**  
**Constitutional Law – Syllabus**  
**Professor David Thaw**  
**Summer 2015**

Contact Information:

- email: dbthaw@gmail.com
- KakaoTalk: +1 202 525 6611

***Draft Version (10 June 2015)***

This course is organized into nine Parts, each of which is divided into several Units (1.1, 1.2, etc.).

There are two books assigned for this class:

- Casebook (CB): Erwin Chemerinsky, Constitutional Law (4th ed., 2013)
- Supplement (Supp.): Erwin Chemerinsky, Constitutional Law: Principles and Policies (4th ed., 2011)

**Readings in the casebook ("CB") are required.**

Readings in the supplement ("Supp.") are recommended. Supplement readings are not mandatory, however these readings should substantially improve students' learning experience.

Students should plan on completing the Casebook (CB) reading in advance of the class period for which they are assigned (exception may be made for the first class as students may register up until the first class). For example, for the **24 June 2015 (Wednesday – Evening Session)** class period, the students should read pages xli–lvii, CB 1–2, CB 2–9, 115–117, 117–126, 151–152, and 152–156 in the Casebook.

The Supplement (Supp.) readings are assigned to assist students in learning the material. They are not required for the course, but likely **will substantially help students** understand the cases and material. Students may complete this reading *either before or after* the class period for which it is assigned, whichever they find more helpful.

Thoughts on Learning Constitutional Law as a non-U.S. student:

*My job with this course is to help you understand U.S. Constitutional Law. It is a very challenging subject for non-U.S. students, as most doctrines emerge from court cases rather than from formal, express rules. The reading of cases is essential both to understanding the law, and (for those interested) to successfully passing the bar examination in the United States. This is because passing the bar requires applying doctrines to "new" fact patterns – something learned from "practicing" by reading and understanding cases.*

*Accordingly, I strongly encourage all students to come to me with questions – both during class and at other times. You may ask questions about subjects from a previous class during subsequent classes.*

The material expected to be covered in each class is broken out by session and listed in **bold underline** below. As this is a highly-compressed class, these dates are subject to change if we fall behind. Extra time is planned in the syllabus in case we fall behind, and for review.

### **24 June 2015 (Wednesday – Evening Session)**

1. The American Federalist Republic
  - 1.1. The Constitution and the Structure of Government
    - 1.1.1. Background (Supp. 1–6)
    - 1.1.2. The United States Constitution (CB xli–lvii – *read only for basic familiarity, do not need to read for detail*)
  - 1.2. Mechanics of the United States Government
  - 1.3. Constitutional Authority – The Text and Judicial Review
    - 1.3.1. Background (CB 1–2; Supp. 15–26)
    - 1.3.2. *Marbury v. Madison* (CB 2–9; Supp. 26–30)
2. Federal Legislative Power (U.S. Congress)
  - 2.1. The Scope of Congressional Power – The Necessary and Proper Clause
    - 2.1.1. Introduction (CB 115–117; Supp. 238–240)
    - 2.1.2. *McCullough v. Maryland* (CB 117–126; Supp. 240–247)
    - 2.1.3. Introduction (CB 151–152)
    - 2.1.4. *United States v. Comstock* (CB 152–156)

### **25 June 2015 (Thursday – Evening Session)**

- 2.2. The Scope of Congressional Power – Introduction to the Commerce Clause
  - 2.2.1. Introduction (CB 158–159; Supp. 247–248)
  - 2.2.2. *Gibbons v. Ogden* (CB 159–161; 248–251)
- 2.3. The Commerce Clause – Scope, or "What is Commerce"?
  - 2.3.1. Introduction (CB 163–168; §§ a–c; Supp. 261–268)
  - 2.3.2. *Wickard v. Filburn* (CB 175–177; Supp. 263–265)
- 2.4. Commerce "Among the States"
  - 2.4.1. Introduction (CB 177–178)
  - 2.4.2. *Heart of Atlanta Motel, Inc. v. United States* (CB 178–180; Supp. 266)
  - 2.4.3. *United States v. Lopez* (CB 190–194; Supp. 269–272)
- 2.5. Tenth Amendment Limitations on Commerce Power
  - 2.5.1. Introduction (CB 190; Supp. 276)
  - 2.5.2. *Gonzales v. Raich* (CB 210–214, Supp. 276 – 277)
  - 2.5.3. *Printz v. United States* (CB 230–234, Supp. 331 – 332)

## **27 June 2015 (Saturday – Morning Session)**

- 2.6. Dormant Commerce Clause
  - 2.6.1. Introduction (CB 455 – 457; Supp. 435 – 436)
  - 2.6.2. *Southern Pacific Co v. Arizona* (CB 466 – 469, Supp. 452 – 453)
- 2.7. Taxing and Spending Power
  - 2.7.1. Introduction (CB 241; Supp. 279–284)
  - 2.7.2. *South Dakota v. Dole* (CB 248–249; Supp. 284–286)
  - 2.7.3. *National Federation of Independent Businesses v. Sebelius* (CB 129–132, 135–136: Parts I, II, and III–C)
- 2.8. Post–Civil War Amendments (13th, 14th, and 15th Amendments)
  - 2.8.1. Introduction (CB 251–253: *Civil Rights Cases*, etc.; Supp. 293–299)
  - 2.8.2. *Katzenbach v. Morgan & Morgan* (CB 256–258; Supp. 299–301)
  - 2.8.3. *City of Boerne v. Flores* (CB 260–265; Supp. 301–305)

## **27 June 2015 (Saturday – Afternoon Session)**

- 3. Federal Executive Power (The Presidency and Federal Agencies)
  - 3.1. Presidential Power
    - 3.1.1. Introduction (CB 317–318, Supp. 343–344)
    - 3.1.2. *Youngstown Sheet & Tube Co. v. Sawyer* (CB 318–326; Supp. 344–349)
    - 3.1.3. *United States v. Nixon* (CB 327–331; Supp. 362–366)
  - 3.2. Ability of Congress to Increase Executive Power
    - 3.2.1. Introduction (CB 333; Supp. 350–351)
    - 3.2.2. *Clinton v. City of New York* (CB 333–336)

## **28 June 2015 (Sunday – Morning Session)**

- 3.3. Federal Agencies, The Executive, and other Problems of the Administrative State
  - 3.3.1. Introduction to the Administrative State (CB 338–339; Supp. 333 – 334)
  - 3.3.2. *INS v. Chadha* – the Legislative Veto (CB 344–353; Supp. 338 – 340)
  - 3.3.3. *Morrison v. Olson* – Appointment Power (CB 353–358; Supp. 353 – 354)
- 3.4. Separation of Powers and Foreign Policy
  - 3.4.1. Introduction (CB 369–370)
  - 3.4.2. *United States v. Curtiss–Wright Export Corp.* (CB 370–372; Supp. 374–376)
- 3.5. Presidential War Powers and Terrorism
  - 3.5.1. Introduction to the War Powers Act (CB 376–381; Supp. 381–383)
  - 3.5.2. Introduction to Counter–Terrorism Powers (CB 381–382; Supp. 384)
  - 3.5.3. *Hamdi v. Rumsfeld* (CB 382–388; Supp. 385–386)

### **28 June 2015 (Sunday – Afternoon Session)**

4. Federal Judicial Power (Article III Courts)
  - 4.1. Interpretive Limits
    - 4.1.1. Introduction (CB 11–13)
    - 4.1.2. *District of Columbia v. Heller* (CB 13–22)
  - 4.2. Congressional Limits
    - 4.2.1. Introduction (CB 33–35; Supp. 158–159)
    - 4.2.2. *Ex Parte McCardle* – Exceptions and Regulations Clause (CB 35–37; Supp. 160–162)
    - 4.2.3. *United States v. Klein* – Separation of Powers (CB 37–39; Supp. 163–165)
  - 4.3. Justiciability – No Advisory Opinions
    - 4.3.1. Introduction to Justiciability (CB 40–41; Supp. 48 – 51)
    - 4.3.2. Prohibition of Advisory Opinions (CB 42–43; Supp. 52 – 59)
    - 4.3.3. *Plaut v. Spendthrift Farm* (CB 43–45; Supp. 166)

### **30 June 2015 (Tuesday – Evening Session)**

- 4.4. Justiciability – Standing
  - 4.4.1. Introduction (CB 45–46; Supp. 59–65)
  - 4.4.2. *Allen v. Wright* (CB 46–51; Supp. 72 – 74)
  - 4.4.3. *United States v. Richardson* – Prohibition Against Generalized Grievances (CB 72 – 74; Supp. 91, 93 – 94)
- 4.5. Justiciability – Ripeness
  - 4.5.1. Introduction (CB 81; Supp. 104 – 106)
  - 4.5.2. *Abbott Laboratories v. Gardner* (CB 84 – 85; Supp. 106 – 109)
- 4.6. Justiciability – Mootness
  - 4.6.1. Introduction (CB 86–89; Supp. 114 – 128)
- 4.7. Justiciability – Political Questions
  - 4.7.1. Introduction (CB 91–93; Supp. 130 – 132)
  - 4.7.2. *Baker v. Carr* (CB 93–94; Supp. 132 – 136)

### **01 July 2015 (Wednesday – Evening Session)**

5. Civil Rights and Civil Liberties
  - 5.1. Application of the Bill of Rights to the States
    - 5.1.1. Introduction (CB 517 – 519)
    - 5.1.2. *Barron v. Mayor & City Council of Baltimore* (CB 519 – 520, Supp. 503 – 504)
    - 5.1.3. *Slaughter–House Cases* (CB 522 – 527, Supp. 506 – 509)
    - 5.1.4. *Duncan v. Louisiana* (CB 536 – 538, Supp. 515 – 516)
  - 5.2. Application of the Bill of Rights and the Constitution to Private Conduct
    - 5.2.1. Introduction (CB 548)
    - 5.2.2. *Civil Rights Cases* (CB 548 – 550, Supp. 520 – 521)

- 5.2.3. *Jackson v. Metropolitan Edison* – Public Function Exception (CB 555 – 557, Supp. 531 – 532)
- 5.2.4. *Shelley v. Kraemer* – Entanglement Exception (CB 567 – 570, Supp. 540 – 542)
- 5.2.5. *Lugar v. Edmondson Oil* – Test for Entanglement Exception (CB 570 – 572; Supp. 542)

### **02 July 2015 (Thursday – Evening Session)**

- 6. Equal Protection
  - 6.1. Introduction to Scrutiny (CB 711 – 716; Supp. 685 – 690)
  - 6.2. Rational Basis Test
    - 6.2.1. Introduction (CB 717 – 719; Supp. 694 – 695)
    - 6.2.2. *Romer v. Evans* (CB 720 – 723, Supp. 698)
    - 6.2.3. *City of Cleburne, Texas v. Cleburne Living Center* (CB 736 – 740, Supp. 704 – 705)
  - 6.3. Classification Based on Race and National Origin – Strict Scrutiny
    - 6.3.1. Introduction (CB 740; Supp. 711 – 713)
    - 6.3.2. *Loving v. Virginia* (CB 754 – 755, Supp. 716 – 717)
    - 6.3.3. *Brown v. Board of Education* (CB 762 – 765, Supp. 722 – 724)
    - 6.3.4. *Washington v. Davis* (CB 771 – 775, Supp. 727 – 728)
  - 6.4. Gender Classifications – "Intermediate Scrutiny"
    - 6.4.1. Introduction (CB 866 – 867; Supp. 769)
    - 6.4.2. *Craig v. Boren* (CB 872 – 875, Supp. 774 – 775)

### **04 July 2015 (Saturday – Morning Session)**

- 7. Due Process and "Fundamental Rights"
  - 7.1. Introduction (CB 933 – 939; Supp. 812 – 814)
  - 7.2. Constitutional Protection for Reproductive Autonomy
    - 7.2.1. Introduction (CB 967 – 969)
    - 7.2.2. *Griswold v. Connecticut* (CB 970 – 972, Supp. 835 – 837)
    - 7.2.3. *Roe v. Wade* (CB 979 – 985, Supp. 840 – 842)
    - 7.2.4. *Planned Parenthood v. Casey* (CB 988 – 995, Supp. 846 – 849)
  - 7.3. Constitutional Protection for Sexual Orientation and Sexual Activity
    - 7.3.1. Introduction (CB 1046)
    - 7.3.2. *Lawrence v. Texas* (CB 1046 – 1051, Supp. 866 – 868)
  - 7.4. Procedural Due Process
    - 7.4.1. Introduction (CB 1142 – 1144; Supp. 557 – 559, 569 – 70, 591 – 593)
    - 7.4.2. *Goldberg v. Kelley* (CB 1161 – 1165, Supp. 597)
    - 7.4.3. *Matthews v. Eldridge* (CB 1182 – 1187, Supp. 593 – 597)

### **04 July 2015 (Saturday – Afternoon Session)**

- Lecture on IRAC/How to Write U.S. Law School/Bar Examination Essay Questions
- Practice Mid-Term Examination

### **05 July 2015 (Sunday – Morning Session)**

#### 8. First Amendment: Freedom of Expression

##### 8.1. Free Speech Methodology

8.1.1. Introduction (CB 1197, 1199–1206)

8.1.2. *Turner Broadcasting System Inc. v. Federal Communication Commission* (CB 1206 – 1211, Supp. 964 – 965)

8.1.3. *City of Renton v. Playtime Theatres, Inc.* (CB 1223 – 1226, Supp. 965 – 967)

8.1.4. *Near v. Minnesota* – Prior Restraint (CB 1246 – 1248, Supp. 985)

##### 8.2. Types of Unprotected and Less Protected Speech

8.2.1. Introduction (CB 1304; Supp. 1017 – 1018)

8.2.2. *Schenck v. United States* – Clear and Present Danger (CB 1307 – 1308, Supp. 1019 – 1021)

8.2.3. *Chaplinsky v. New Hampshire* – Fighting Words (CB 1338 – 1340, Supp. 1033 – 1034)

8.2.4. *Miller v. California* – Obscenity (CB 1372 – 1374, Supp. 1052 – 1053)

8.2.5. *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York* – Commercial Speech (CB 1435 – 1438, Supp. 1125 – 1127)

8.2.6. *New York Times Co. v. Sullivan* – Defamation (CB 1462 – 1465, Supp. 1079 – 1081)

8.2.7. *United States v. O'Brien* – Conduct that Communicates (CB 1491 – 1494, Supp. 1096 – 1100)

### **05 July 2015 (Sunday – Afternoon Session)**

#### 8.3. Places Available for Speech ("Time, Place and Manner Regulation")

8.3.1. Introduction (CB 1545, 1553; Supp. 1163 – 1165)

8.3.2. *Hill v. Colorado* (CB 1554 – 1560, Supp. 1169 – 1170)

#### 8.4. Freedom of Association

8.4.1. Introduction (CB 1616 – 1619; Supp. 1198 – 1199)

8.4.2. *NAACP v. State of Alabama* (CB 1619 – 1621, Supp. 1202)

#### 8.5. Freedom of the Press

8.5.1. Introduction (CB 1637 – 1639; Supp. 1208 – 1210)

8.5.2. *Red Lion Broadcasting Co. v. Federal Communications Commission* (CB 1654 – 1658, Supp. 1217)

**07 July 2015 (Tuesday – Evening Session)**

9. First Amendment: Religion

9.1. Introduction (CB 1673 – 1675; Supp. 1225 – 1228)

9.2. Free Exercise Clause

9.2.1. Introduction (CB 1683 – 1684; Supp. 1291 – 1292)

9.2.2. *Employment Division, Department of Human Resources of Oregon v. Smith* (CB 1683 – 1689, Supp. 1303 – 1305)

9.3. Establishment Clause

9.3.1. Introduction (CB 1708 – 1713; Supp. 1236 – 1242 *note: Casebook reading may be a better summary for this assignment*)

9.3.2. *Lemon v. Kurtzman* (CB 1719 – 1723, Supp. 1246 – 1250)

**08 July 2015 (Wednesday – Morning Session)**

*Review Session; Special Topics in American Law*

(additional time reserved if we fall behind)

***Again, please do not hesitate to ask questions at any time during the course!***

FINAL EXAM INFORMATION

The final examination will be administered by HUGS Staff on **11 July 2015 (Saturday) from 1900h – 2200h (7:00pm – 10:00pm)**. *This time may be subject to change – please consult with HUGS staff to confirm.*

**TENTATIVE** exam structure:

- one "traditional" U.S. law school essay question (issue spotting, analysis)
- 2-5 "short answer" questions (brief answers, generally a few sentences or a paragraph, as appropriate)
- multiple choice section – "traditional" U.S. multiple choice questions, simulating the constitutional law questions on the D.C. Bar Examination (number to be determined)