

## CONSTITUTIONAL RIGHTS

Professor Margaret Montoya

Fall 2008 (MR, 10:00 - 11:15, Rm: 2402)

### COURSE DESCRIPTION

#### ASSIGNED READING:

This course will use PROCESSES OF CONSTITUTIONAL DECISIONMAKING: CASES AND MATERIALS BY Brest, Levinson, Balkin, Amar, Siegel (Fifth Ed. 2006) and other supplementary reading.

#### COURSE PROTOCOLS:

- My teaching assistant will schedule tutorial sessions throughout the semester. I will have some voluntary, short pre-class (reading and reviewing/briefing) and post-class (identifying the take-away messages/outlining and retention) sessions.
- The final examination is modified closed book; you may bring in only a one-page outline you have prepared yourself or with a study group in which you have been an active participant. The final exam will be essay(s) and multiple choice questions.
- Class attendance is mandatory and absences (with or without an excuse) will affect your grade or may result in your withdrawal from the class. Class attendance is judged by a standard of professionalism and includes being on time, prepared, respectful of differing views, attentive and willing to participate in class.
- Use of a laptop in class is to be SOLELY for legitimate class purposes. Laptops can be, and sometimes are, a distraction, impeding listening and understanding. I will occasionally ask you to close your computers to enhance your ability to focus on the discussion.

#### PEDAGOGICAL APPROACHES:

The objective of this class is to introduce students to the processes used by the Supreme Court in interpreting the U.S. Constitution and specifically in deciding disputes involving the Bill of Rights and the Fourteenth Amendment. The course is designed to provide students with learning techniques that enhance the retention and retrieval of the Law and its application to problems.

#### Classroom discussions:

Students will be expected to read and "brief" the opinions of the Court explicating the competing philosophical, ideological, and jurisprudential stances adopted by the Justices. Students will be doing "paper and pencil" / "keyboard and screen" exercises as a way of honing their legal literacy and analytical skills. The first assignment is attached to this description as an example of a briefing exercise.

### Collaborative work/Poster project (cognitive maps):

The students, working individually and in small groups, will use the cases and related materials to develop a framework called a cognitive map for organizing, comparing, and contrasting factual patterns, legal doctrines, precedents, procedural devices, and other aspects of the cases. This cognitive map will be prepared as a poster and will be the basis for the oral presentation described below.

### Oral presentations:

Working in groups, the students will re-argue two highly controversial cases dealing with the desegregation of the student bodies of medical schools (*Bakke*) and law schools (*Grutter*). In order to explore the complexity of the constitutional issues and the doctrinal [and policy] choices available to the Court, students will assume the role of parties and intervenors as well as *amici curiae*. The arguments will be presented to the larger community in the form of mock arguments (with the assistance of local judges and lawyers) or panel presentations.

### Final exam:

Knowledge of Constitutional Rights and the approaches justices use and have used in the past in interpreting the Constitution is part of the basic lawyer's toolkit; moreover this material is invariably tested on the Multistate Exam. The final exam will use a traditional format—two or more factually ambiguous patterns requiring the student to retrieve precedents, doctrines, historical trends, policy arguments, etc. and apply them in a coherent and organized manner, demonstrating her/his understanding of the important legal issues and how to analyze and resolve them.

### Course outline for second half of material (optional and extra credit)

Students may submit an outline of the second half of the course material for extra credit.

## **GRADING AND ASSESSMENT:**

- Class preparation, small group work and class participation (30%),
- Poster--cognitive mapping project (in place of outline for first half) (20%),
- Oral presentation (*Bakke/Grutter*) (20%), and
- Final exam (30%).
- Extra credit: outline of second half of course material (up to 10%).

## **LEARNING OBJECTIVES:**

### **Knowledge:**

When they finish this course students will understand the following:

- The historical connections of the 14th Am. to slavery, how and why the Bill of Rights now applies to the States,
- How the 14th Am. was used to challenge the segregation of educational institutions
- How "race" is treated under the Equal Protection clause & how the Court uses "suspect" classifications
- What "preferential" treatment for minorities means in constitutional analysis
- How "sex" is treated under the Equal Protection clause and how the Court uses "intermediate" scrutiny
- How rights can exist outside the text of the Constitution as "implied" rights applying to the family, procreation, abortion, sexuality and the right to end one's own life.
- Some broad outlines of the current issues involving the first amendment: the rights of religion, speech, association, and press.

### Skills:

When they finish this course, students will have become more proficient in the following:

- Reading and analyzing Constitutional law opinions by formulating a set of questions about, *inter alia*,
  - the historical context,
  - the procedural posture,
  - the standard of review,
  - the applicable sections of the Bill of Rights,
  - the relevant doctrines and precedents
  - the in/consistencies in constitutional analysis.
- Working collaboratively and synergistically in small groups to effectively use scarce time.
- Organizing complex constitutional doctrines and cases through different historical periods using cognitive maps and outlines.
- Using oral presentations to increase confidence in communicating succinctly about constitutional disputes.
- Legal problem-solving (that is, the rigorous application of constitutional precedents to factual scenarios) through the use of review problems and exam questions.