

**CHEN, CONSTITUTIONAL LAW, UNIT 1
SPRING 2009
SYLLABUS**

Professor Alan Chen

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Office Hours: By appointment

Class: Mondays/Tuesdays/Wednesdays--2:45 p.m.-3:55 p.m.

Classroom: Room 190

Required Text: ERWIN CHEMERINSKY, CONSTITUTIONAL LAW (Aspen Publishers 2d ed. 2005).

All reading assignments listed on syllabus are to the casebook unless otherwise indicated.

Occasional supplemental readings will be provided on the course Blackboard page during the semester.

Recommended (NOT required) Supplemental Material: ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES (Aspen Publishers 3d ed. 2006).

Schedule: This syllabus contains a list of topics and reading assignments that we will cover throughout the semester. I expect you to keep approximately **one assignment ahead** of where we are in class. The pace of the course often depends upon many variables, such as the length of classroom discussion on any given topic. I will keep you posted as the semester progresses. When possible, I try to send weekly email updates about how far I expect to get the following week.

While we will follow this syllabus as closely as possible, there may be additions or deletions at certain points during the semester. I will try to alert you if there is a change, but please check this syllabus regularly for updates.

**PART I--STRUCTURAL CONSTITUTIONAL LAW
UNIT I--INTRODUCTION TO JUDICIAL REVIEW**

Jan. 13--Class 1: Introduction to Course

Read:

- (1) The United States Constitution, pp. xxxix-liv
- (2) Important Information About This Course
- (3) Handout #1 – New York Times article summarizing the 2007-08 Supreme Court Term
- (4) Handout #2 – New York Times summary of important Supreme Court decisions, 2007-08
- (5) Handout #3 – New York Times article previewing the 2008-09 Supreme Court Term
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- (6) Handout #4 – New York Times article discussing pending Executive Powers case
- (7) Handout #5 – Excerpt from Federalist Paper No. 10
- (8) Handout #6 – Excerpt from Federalist Paper No. 78

Assignment: The class discussion board link is now live. We will be using Blackboard, so there's no need to register. To access it, click on the link to the left and enter your student ID (banner) number and password, just as if you were accessing MyWeb. **As part of your assignment for the first day of class**, under the topic "Response to First Day's Reading," please **post a brief statement** expressing a reaction to any part of the first day's reading. I am particularly interested in your views about the most important underlying values of the United States Constitution and any constitutional law topics in which you are especially interested.

Chief Justice William

John Marshall Marbury

Jan. 14—Class 2: The Federal Judicial Power--

Marbury v. Madison

Re-read: U.S. Constitution, Art. III, p. xliv-xlv

Read:

(1) Chapter I, The Federal Judicial Power, pp. 1-10

(2) Handout #7 – Excerpt from *Planned Parenthood v. Casey* [Click on links or go to Supplemental Readings page for these materials]

Jan. 15--Class 3: No new reading

Assignment 3: Constraints on Judicial Power--Competing Theories of Constitutional Interpretation

Read: pp. 10-24

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Assignment 4: Constraints on Judicial Power--Justiciability Requirements: Constitutional and Non-Constitutional Limits on the Exercise Judicial Power (Advisory Opinions; Ripeness; Mootness; Political Questions)

Read: pp. 30-34; 67-77

Assignment 5: Constraints on Judicial Power--Constraints on Judicial Power--Justiciability Requirements: Constitutional and Non-Constitutional Limits on the Exercise Judicial Power (Standing), *Lujan v. Defenders of Wildlife*

Read: pp. 34-50

UNIT II--THE SCOPE OF CONGRESSIONAL POWERS

Assignment 6: Overview--Origins of Commerce Clause Doctrine and Implied Legislative Powers,

McCulloch v. Maryland

Read: pp. 99-112

Assignment 7: The Resurrection of Judicially-Enforced Federalism Limits; *United States v. Lopez*; *United States v. Morrison*; *Gonzales v. Raich*

Read: pp. 153-170; Handout #8; Handout #9

Assignment 8: The Tenth Amendment as Limitation on Congressional Power; *Garcia v. SAMTA*; *New York v. U.S.*; *Printz v. United States*

Read: pp. 148-152, 176-197

Assignment 9: Congressional Power Under Section 5 of the Fourteenth Amendment; *Heart of Atlanta Motel*; *Katzenbach v. McClung*; *City of Boerne v. Flores*

Read: pp. 138-144; 207-222

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Assignment 10: Other Congressional Powers--War, Treaty, Taxing, Spending

Read: pp. 198-201; 204-207

Assignment 11: Congressional Power and States' Sovereign Immunity

Read: pp. 222-230; Sovereign Immunity Light (Handout #10)

UNIT III--STATE REGULATION OF COMMERCE

Assignment 12: Preemption

Read: pp. 365-381

Assignment 13: The Theory of the Dormant Commerce Clause; State Protectionism Through Commercial Discrimination

Read: pp. 381-397; 402-410

Assignment 14: Dormant Commerce Clause

Analysis

Read: pp. 411-416

Assignment 15: Exceptions to the Dormant Commerce Clause; Other Doctrines Prohibiting Discrimination

Read: pp. 423-443

UNIT IV--FEDERAL EXECUTIVE POWER

Assignment 16: Sources of Executive

Authority

Read: pp. 271-280

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Assignment 17: Congressional Authority to Grant Power Beyond Art. II; Contemporary

Issue: Presidential "Signing Statements"

Read: pp. 287-292; (Handout #11)

President Nixon Resigning

Assignment 18: The Administrative State and the Tension Between Legislative and Executive Authority

Read: pp. 292-307

Assignment 19: Appointments and Removal Power

Read: pp. 307-320

Assignment 20: The President, Foreign Affairs, and War

Read: pp. 320-324; 327-342

PART II--INDIVIDUAL CONSTITUTIONAL RIGHTS AND LIBERTIES

UNIT V--IMPORTANT INDIVIDUAL RIGHTS FRAMEWORKS

Assignment 21: Incorporation of the Bill of Rights; The State Action Doctrine

Read pp. 463-467; 469-478; 487-490

UNIT VI--THE EQUAL PROTECTION CLAUSE

Assignment 22: Introduction to the Equal Protection Clause and Judicial Methodology

Read: pp. 617-624; 634-640

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Assignment 23: Some Different Applications of Equal Protection Doctrine

Read: pp. 624-633; 640-646

Gay Rights Protest

Assignment 24: Race and the Fourteenth

Amendment - Historical Approach:

Read: pp. 662-671; 659-661

NAACP lawyer Thurgood Marshall in front of the Supreme Court

Assignment 25: Race and the Fourteenth Amendment - Heightened Scrutiny of Racial Classifications; Discriminatory Purpose and Proof

Read: pp. 652-658; 671-674; 684-690

Assignment 26: Benign Racial Classifications

Read: pp. 708-715; 722-740

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Assignment 27: Equal Protection and Gender Classifications

Read: pp. 752-768

Assignment 28: Equal Protection and Government Classifications Based on Sexual Orientation

Read: (Handout #12)

UNIT VII--IMPLIED FUNDAMENTAL RIGHTS

Assignment 29: Introduction to Fundamental Rights--Substantive (Economic) Due Process--

Lochner v. New York

Read: pp. 526-531; 538-547

Assignment 30: Modern Substantive Due Process Doctrine

Read: pp. 815-821

Assignment 31: The Origins of Modern

Substantive Due Process Doctrine--*Griswold v.*

Connecticut and the Right of Privacy

Read: pp. 847-858

Assignment 32: The Right of Privacy cont'd--

Griswold and *Roe v. Wade*

Read: pp. 858-866

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Assignment 33: Other Aspects of Privacy: Heterosexual Marriage, "Family," and Nontraditional Intimate and Sexual Relationships

Read: pp. 835-842; 920-932