

# **Constitutional Law I**

## **Section 2**

### **Syllabus – Part 1 (Weeks 1-7)**

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#### **Overview:**

Welcome to Constitutional Law I! In this class we will be covering the structure of the United States Constitution, which includes subjects like federalism; Congressional, Presidential, and judicial power; separation of powers within the federal government; and relations with foreign nations and Indian tribes.

Get yourself a copy of the United States Constitution. Read it. We start every week with that text.

The opening question you should be asking every week is where source of authority for the government's action is located. Is it in the text of the Constitution? Is it in the structure of the Constitution? A treaty? Court cases? Where? The second question often, though not always, is whether that source of authority is legitimate.

In class, we're going to be doing a good bit of writing, probably at the beginning and the end of each class. I'll be able to tell if you've prepped for class and (maybe) if you were paying attention. Also, it's good practice for exam writing, which I hope will help you in all your classes. I won't be able to read all your writing in much depth, but I'll do my best. Typically, I will read the materials turned in from 20 students a week (your TA, Ryan Mills, might read a few more), and provide comments as we can.

You're also going to be practicing (fake) law in this class in something I call "The Game." You will be attorneys in cases, all using original primary documents in real disputes. You'll be assigned to a small law firm of four students (one team will have three). You'll learn to work together, and probably fight with each other – just like a real law firm – and maybe learn a little about being lawyers. You'll write a few things, briefs and judicial opinions. Your research is closed, meaning you need only rely on the materials provided in class.

Also, I want you to talk. It's a requirement of the class. You're all going to be talking for a living. Talking is part of your grade. You'll talk to me, you'll talk to each other, and you'll do it before a large group of your peers. This is a class about opening up your minds. I'm not going to give you all the malarkey about thinking like a lawyer. You're here to learn how to agree, and how to disagree. However, don't bother raising your hand unless I ask you to. I probably won't call on you just because you have your hand raised. I'll just call on you.

Finally, this isn't opinion class. Don't tell me your opinion. I don't really care about opinions. "Everyone has one" and so on.<sup>1</sup> Judges and juries don't care opinions either, unless the opinion comes from an expert witness. I care about thinking and analysis. Give me an argument, and support it with reasoning and/or materials from the readings.

**IMPORTANT:** Put your name(s) on the papers you turn in. Seriously.

**JUST AS IMPORTANT:** Good handwriting is essential. This isn't first grade where Ryan and I would give you the benefit of the doubt. We each have little kids. If you can't write better than they do, then you're in a sorry place.

### **Evaluation:**

Your work in your law firm is 67 percent of your grade (33 percent for each of the two rounds we play) and your final exam grade is 33 percent. Tentatively, the final exam will consist of multiple choice questions. Your class participation might (but probably not) bump you up or down very slightly.

### **Attendance:**

I'll know if you missed class because of the writing assignments at the beginning and end of class periods. Duh. An unexcused absence will drop your grade (e.g., from an A to an A-minus). Excused absences are rare. Ask me in advance, if you can.

### **Class Materials:**

Class Materials are or will be available on the Turtle Talk blog:

<http://turtletalk.wordpress.com/matthew-lm-fletcher/fletcher-class-materials/constitutional-law-i-materials-spring-2014/>

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<sup>1</sup> See HOME FOR THE HOLIDAYS (Paramount Pictures 1995).

## Assignments:

### Week 1 (Jan. 8, 2014) – Introduction Part 1

Read *Marbury v. Madison* and *Wickard v. Filburn*.

Recommended reading includes *The Story of Marbury v. Madison* and *The Story of Wickard v. Filburn*.

### The Game – Round 1:

You will be re-litigating four Supreme Court cases: *Wickard v. Filburn* (WHEAT), *Seminole Tribe v. Florida* (IGRA), *National Federation of Independent Businesses v. Sebelius* (ACA), and *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak* (GUN LAKE).

In each of the cases, you will take the facts are presented in the Supreme Court's original opinion (or opinions, as the case may be). On Turtle Talk, you will find several cases listed under each of the four matters – these cases form the foundation of your research into these matters – and you may also use any case or other materials assigned in the class. Don't bother researching additional materials. Life is too short.

Assume the Court has granted a motion for rehearing in the matter, with specific instructions in each case as follows:

- WHEAT: Should the decision in *Wickard v. Filburn* be overruled under the Commerce Clause?
- IGRA: Should the decision in *Seminole Tribe v. Florida* be reversed under the Eleventh Amendment?
- ACA: Should the decision in *National Federation of Independent Businesses v. Sebelius* be reversed under the Taxing and Spending Power?
- GUN LAKE: Should the decision in *Marbury v. Madison* establishing the principle of judicial review of federal statutes be overruled, either because of federal sovereign immunity or because individuals lack standing to challenge federal statutes?

Here are the teams:

Group A (Teams A1, A2, A3, A4): WHEAT Petitioner; IGRA Respondent; ACA Trial Judge; GUN LAKE Appellate Panel

Group B (Teams B1, B2, B3, B4): IGRA Petitioner; ACA Respondent; GUN LAKE Trial Judge; WHEAT Appellate Panel

Group C (Teams C1, C2, C3, C4): ACA Petitioner; GUN LAKE Respondent; WHEAT Trial Judge; IGRA Appellate Panel

Group D (Teams D1, D2, D3, D4): GUN LAKE Petitioner; WHEAT Respondent; IGRA Trial Judge; ACA Appellate Panel

Follow the instructions for each week's assignments related to The Game carefully. Nothing due until Week 3....

## **Week 2 (Jan. 14, 2014)—Introduction Part 2**

Read *National Federation of Independent Businesses v. Sebelius* (opinion of Roberts, C.J. – Intro, Part I, Part III-B); *Seminole Tribe v. Florida* (opinion of Rehnquist, C.J.); *Match-E-Bé-Nash-She-Wish Band of Pottawatomi Indians v. Patchak* (opinion of Kagan, J.)

Recommended reading includes the unassigned portions of *NFIB*, *Seminole Tribe*, and *Patchak*.

## **Week 3 (Jan. 22, 2014)—The Interstate Commerce Clause**

Read *Gibbons v. Odgen*; *United States v. Darby*; *United States v. Lopez* (opinion of Rehnquist, C.J.); *NFIB* (opinion of Roberts, C.J. – Part III-A)

Due by the beginning of class in hard copy – Four copies of a four-page (double spaced) opening brief by Petitioner against Respondent, with recommendations for penalty. Provide a caption and an argument section. For the pleading served on the professor, detail hours worked on the project by each law firm member in one-tenths of an hour (six minute intervals) on a separate page attached the pleading. Include your team number on each page.

Immediately prior to the beginning of class, serve one copy on me, serve one copy to your adversary, and serve one copy on each of your judges. For example, Team A1, serving as the Petitioner in the WHEAT matter, will file a pleading the first week on the Respondent in the WHEAT matter – Team D1 – a pleading on the Trial Judge in the WHEAT matter – Team C1 – and a pleading on the Appellate Panel for the WHEAT matter – Team B1. A2 will serve its pleadings on B2, C2, and D2. A3 will serve its pleadings on B3, C3, and D3. A4 will serve its pleadings on B4, C4, and D4. And so on. Each team will also serve a pleading on the professor/TA. We'll do this each week. Service by email is not acceptable.

#### **Week 4 (Jan. 29, 2014)—The Taxing Power and the Necessary and Proper Clause**

Read *McCulloch v. Maryland*; *South Dakota v. Dole*; *NFIB* (Opinion of Roberts, C.J. – Part III-B; Part IV)

Due at the beginning of class in hard copy – Four copies of a four-page answer brief (double-spaced) by Respondent. Attach a copy of the opening brief filed in your case. On separate page to the pleading filed with your professor, detail hours worked on the project by each law firm member in one-tenths of an hour (six minute intervals). Serve your professor, your adversary, and both your courts in hard copy.

#### **Week 5 (Feb. 5, 2014)—The Tenth and Eleventh Amendments**

Read *Garcia v. SAMTA* (opinion of Blackmun, J.); *New York v. United States* (opinion of O'Connor, J.); *Printz v. United States* (opinion of Scalia, J.); *Seminole Tribe* (opinion of Rehnquist, C.J.); *Alden v. Maine* (opinion of Kennedy, J.)

Due at the beginning of class in hard copy – Four copies of a two-page (double-spaced) reply brief by Petitioner to the answer brief. Attach copies of opening and answer briefs filed in the matter so far. On separate page in the pleading served on the professor, detail hours worked on the project by each law firm member in one-tenths of an hour (six minute intervals).

#### **Week 6 (DATE TBA; probably Monday, Feb 10, 2014)—Political Questions and Standing**

Read *Nixon v. United States* (1993); *Massachusetts v. EPA* (2007) (opinion of Stevens, J.); *Bond v. United States* (2011); *Clapper v. Amnesty International* (2013) (opinion of Alito, J.)

Due at regular class time (8:30 am) on Wednesday, Feb. 12, 2014 in hard copy – Four copies of a four-page written opinion by the Trial Judge. Individual team members are prohibited from filing concurring or dissenting opinions. Attach copies of opening, answer, and reply briefs filed in the matter so far. On separate page in the pleading served on the professor, detail hours worked on the project by each law firm member in one-tenths of an hour (six minute intervals).

## **Week 7 (Feb. 19, 2014)—Treaty Power and the Indian Commerce Clause**

Read *Missouri v. Holland*; *Medellin v. Texas* (opinion of Roberts, C.J.); [*Bond v. United States* (2014)]; *United States v. Kagama*; *United States v. Lara* (opinion of Breyer, J.)

Due at the beginning of class in hard copy – Written opinion by Appellate panel in each case. Include a two-paragraph *per curiam* opinion authored by the entire team decision including judgment. Then include *seriatim* opinions by each judge concurring or dissenting in the judgment, with analysis. On separate page in the pleading served on the professor, detail hours worked on the project by each law firm member in one-tenths of an hour (six minute intervals).