

Constitutional Law I
Spring Semester 2012
Professor Massey

General Information:

Office and Office Hours:

Room 208, 198 McAllister; Phone: 415-565-4659; E-mail: masseyc@uchastings.edu.
Official office hours are 10:00 am to 12 noon on Tuesdays, but I am always happy to meet with you at other times to discuss any problems or questions you may have concerning this course. Simply drop by or, if you prefer, make an appointment. Feel free to use the phone or e-mail as well.

Class Meetings:

In the event that I must cancel a class, that class will be made up during the “dead” hours.

Final exam:

The exam will be a three hour closed book exam. A portion of it will consist of a series of multiple choice questions. I will impose word limits on the essay portion.

Grading:

The final grade for the course is the grade on the final exam; provided, however, that I may adjust raw exam scores up or down by as much as 15% of the total potential raw score. Any such upward adjustment will be the result of extraordinary contributions toward discussion and understanding of the materials. Quality, not quantity, counts. Any downward adjustment will be the result of extreme disinterest in the course, as reflected by protracted absence from class, repeated and unwarranted refusal to participate in class, or sustained evidence of lack of preparation and engagement. I exercise this option sparingly; it is intended for unusual cases.

Materials:

The casebook is Massey, *American Constitutional Law: Powers and Liberties*, Third Edition (Aspen, 2009) and the 2011 Supplement to *American Constitutional Law*, Third Edition. All page references are to the casebook, but such references include any materials in the Supplement that are relevant to the assigned casebook pages. The Supplement is keyed to the casebook, so make it a habit to check the Supplement when you do your readings.

Student Learning Outcomes:

By the conclusion of this course you will understand the role of judicial review in controversies involving the respective powers of the federal government and the states, and controversies involving the separation of powers within the federal government. You will understand the limitations upon judicial reviews and acquire a working knowledge of the various levels of judicial scrutiny used in assessing the constitutional validity of governmental action in these areas. You will also understand and can apply the principle that constitutional liberties only apply to actions taken by governments, and when nominally private action is state action.

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Reading Assignments

I. The Role of the Supreme Court in Constitutional Law

- A. Judicial Review: Origins, Utility, and Methodology 1-21; 35-47
- B. Review of State Court Judgments and the Doctrine of Adequate and Independent State Grounds 21-35
- C. Political Regulation of Judicial Review 49-65
- D. Justiciability
 - 1. Introduction, Advisory Opinions, and Standing 65-96, Supp 1-13
 - 2. Ripeness, Mootness, and Political Questions 96-118
 - 3. Abstention and the 11th Amendment 118-125

II. The Basic Structure of Federalism

- A. Introduction and Implementing Enumerated Powers through the Necessary and Proper Clause 127-141; Supp 15-26
- B. Implied Default Rules: The Locus of Residual Power in a Federal System 141-153; Supp 26-27

III. National Legislative Power

- A. Congressional Power to Act Under the Commerce Clause
 - 1. General Scope 153-172
 - 2. Roots of Current Doctrine: From 1824 to 1936 172-181
 - 3. Roots of Current Doctrine: 1937 to the present 181-204
 - 4. State Autonomy Limits on the Commerce Power 204-226; Supp 27
- B. Taxing and Spending 227-242; Supp 27-28
- C. Treaties, Foreign Affairs, and the Regulatory War Power 243-251

IV. Federal Limits on State Commercial Regulation: The "Dormant" or "Negative" Aspects of the Commerce Clause

- A. Introduction and Doctrinal Evolution 253-260

- B. Overt Discrimination Against Interstate Commerce 260-270
- C. Neutral Burdens on Interstate Commerce 270-283
- D. Facially Neutral Regulations with Discriminatory Effects or Purposes 284-300; Supp 29-36
- E. States as “Market-Participants” 300-308
- F. Article IV’s Privileges and Immunities Clause 308-317
- G. Pre-emption and Consent: The Role of Congress 317-330; Supp 36-39
- H. State Taxation of Interstate Commerce 330-332

V. Separation of Powers in the National Government

- A. Introduction and Executive Action
 - 1. Domestic Affairs: General Principles 333-346
 - 2. The Appointment and Removal Powers 346-355; Supp 41-44
 - 3. Foreign Affairs: General Principles 355-363
 - 4. War, Treaties, and Executive Agreements 363-383; Supp 44-45
- B. Legislative Action and the Administrative State
 - 1. General Themes 383-397
 - 2. Specific Limits:
 - Non-Delegation, Bicameral Action, Presentment 397-413
- C. Immunities and Privileges 413-424; Supp 45

VI. State Action

- A. Introduction and the Public Function Doctrine 1143-1151
- B. Inextricable Entanglement, Coercion and Encouragement 1151-1165

VII. Congressional Power to Enforce Constitutional Rights

- A. Scope: Public or Private Conduct 1165-1170
- B. Scope: Remedial or Substantive 1170-1191, Supp 153-157

VIII. Economic Rights: The Takings and Contracts Clauses

A. Takings

1. Public Use 551-562; Supp 69-71
2. Regulatory Takings 563-586
3. Conditional Regulatory Takings 587-592

B. Contracts Clause 593-605