

Constitutional Law II

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 six hour online-only take-home exam that will occur on April 27, 2011. The exam will consist of several essay questions with word limits.

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* (Aspen, 3d ed., 2009) and the 2011 Supplement to *American Constitutional Law*. All page references are to the casebook except those marked “Supp.,” which refer to pages in the 2011 Supplement.

Student Learning Outcomes:

By the conclusion of this course you will understand the varying levels of judicial scrutiny that applies to claims of unwritten liberties protected by the due process clause, the varying levels of judicial scrutiny that apply to claims that a litigant has been denied equal protection of the laws, the varying levels of judicial scrutiny that apply to claims that governments have violated the free expression guarantee, and the varying levels of judicial scrutiny that apply to claims that governments have violated the religion clauses.

Constitutional Law II
Spring Semester 2012
Professor Massey

Reading Assignments

I. Due Process

- A. Substantive Due Process
 - 1. The Incorporation Doctrine 443-458; Supp 47-48
 - 2. The Rise and Fall of Economic Substantive Due Process 458-470
 - 3. The Modern Revival of Substantive Due Process
 - a. Origins 470-483
 - b. Abortion: *Roe v. Wade*, *Casey*, and their Progeny 483-516
 - c. Family Relationships 516-523
 - d. Right to Die 523-535; Electronic Handout
 - e. Consensual Sexual Choices and other claimed privacy rights 535-549
 - f. The Methodology of Substantive Due Process Supp 48-56

II. Equal Protection

- A. Overview 607-612
- B. Minimal Scrutiny
 - 1. Means: What is Not Rational? 612-619
 - 2. Ends: What is Not Legitimate? 620-629
 - 3. “Enhanced” Minimal Scrutiny: Ends, Means or Both? 629-640
- C. Strict Scrutiny and Suspect Classifications
 - 1. Race and Ethnicity
 - a. Overview and the Requirement of Purposeful Discrimination 640-649
 - b. Official Racial Segregation 649-658
 - c. Affirmative Action
 - i. General Principles 658-679; Supp 73-74
 - ii. Public Universities and Public Schools 679-708
 - d. Race and the Political Process 708-716
 - 2. Lawfully Resident Aliens 716-719
- D. Intermediate Scrutiny: Sex and Illegitimacy 720-743
- E. Fundamental Rights: Another Avenue for Strict Scrutiny
 - 1. Introduction: Arrested Development? 743-749

2. Voting: Denial 749-759
3. Voting: Dilution 759-765
4. Voting: Gerrymanders 765-775
5. Access to Courts 775-780
6. Interstate Migration 781-787

V. Free Expression of Ideas

A. An Overview 789-800

B. Content-Based Regulation

1. Incitement of Immediate Crime 800-819; Supp 75
2. Obscenity and Pornography 819-840
3. Fighting Words and Hate Speech 841-859
4. Offensive Speech 859-879; Supp 76-79
5. False Statements of Fact 879-889; Supp 79
6. Tortious Invasion of Emotional and Economic Interests 889-895; Supp 80-88
7. Commercial Speech 895-911; Supp 88-90
8. The Process of Identifying Categories of Unprotected Speech Supp 90-110

C. Content-Neutral Regulation

1. Time, Place and Manner 912-919
2. Expressive Conduct 919-927
3. Secondary Effects 927-931

D. When the Government is a Proprietor

1. Public Forum 931-943; Supp 110-111
2. Public Education 943-953
3. Public Employment 953-964
4. Public Sponsorship of Speech 964-972; Supp 111-112

E. Vagueness, Overbreadth, and Prior Restraints 973-986

F. Implicit Expression Rights

1. Association 987-998; Supp 113
2. The Right *Not* to Speak 998-1010; Supp 113-114

G. Free Expression and the Political Process

1. Political Contributions and Expenditures 1011-1036; Supp 114-150
2. Regulation of Elections 1036-1050; Supp 150-151

VI. The Religion Clauses

A. An Overview of History and Theory 1061-1065

B. The Free Exercise Clause

1. Generally Applicable Laws that Impede Religious Conduct 1065-1077
2. Legislation that Targets Religious Conduct or Belief 1077-1086

C. The Establishment Clause

1. Government Financial Aid to Religion 1087-1104
2. Government Endorsement or Coercion of Religious Beliefs 1105-1139
3. Government Accommodation of Religion 1139-1142

VII. The Right to Keep and Bear Arms (if time permits)

A. The Scope of the Right 1193-1214; Supp 159-162

B. Who Must Honor the Right? Supp 99-102.