

POLS 3320 – CONSTITUTIONAL LAW

MW: 3:00- 4:20 pm in LART 318

INSTRUCTOR: Dr. Rebecca Reid
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OFFICE: 307 Benedict Hall
OFFICE HOURS: MWF 11:30 am-2:30 pm, or by appointment

COURSE DESCRIPTION

This course is designed to familiarize students with the development of constitutional law in the United States. Specifically we will examine cases rendered by the Supreme Court in areas involving governmental authority, separation of powers, and federalism.

LEARNING OUTCOMES

Over the course of the semester students will have:

- Developed an understanding of how the Supreme Court operates when it reviews questions of constitutionality.
- Learned specific areas of constitutional law (including governmental authority, separation of powers and federalism) and the cases associated with specific legal doctrine.
- Developed and enhanced the skills necessary to understand Supreme Court opinions.
- Learned to think critically about constitutional issues and articulate arguments in response to specific legal questions.

REQUIRED READING

- Epstein, Lee and Thomas G. Walker. 2016. *Constitutional Law for a Changing America: Institutional Powers and Constraints, 9th Edition*. Washington, DC: CQ Press.

RECOMMENDED READING

- Baum, Lawrence. 2009. *The Supreme Court, 10th Edition*. Washington, DC: CQ Press.
- van Geel, T.R. 2007. *Understanding Supreme Court Opinions, 6th Edition*. New York: Longman Publishers.
- Breyer, Stephen. 2015. *The Court and the World: American Law and the New Global Realities*. Alfred A. Knopf
- Scalia, Antonin. 1997. *A Matter of Interpretation: Federal Courts and the Law*. Princeton University Press.
- Legal writing manuals: Bryan Garner

COURSE REQUIREMENTS AND GRADING

Evaluation in this course will be based on the following components:

Participation	10%
Case Brief	10%
Moot Court Simulation	10%
Separation of Powers Paper	15%
Quizzes	10%
Lowest Midterm Examination	10%
Highest Midterm Examination	15%
Final Examination	20%

The grading scale is as follows:

90-100	A
80-89	B
70-79	C
60-69	D
59 and below	F

Examinations: There will be 3 examinations during the course, two midterms and a final. The exams are closed book. All exams are **cumulative** and will cover material learned in the class lectures and the assigned reading. As a general rule, **make up exams will NOT be offered**; although make up exams will be permitted only under the gravest of circumstances, and I reserve the right to determine whether a make up exam is offered to individuals based upon their situation and timely request. I reserve the right to alter the questions for such make up exams. **Grade challenges must be in written form and submitted within one week of taking the exam.**

I highly recommend consistent studying of all cases, legal tests, and vocabulary through the use of case brief and flash cards.

Quizzes: Short answer quizzes evaluate the reading comprehension of students based upon each chapter of the textbook throughout the semester. These quizzes will cover material from each chapter but are also **cumulative**, and these questions are eligible for exams. As such, these quizzes are designed to help students prepare for exams. The final quiz score is calculated by the average of highest-scored 5 quizzes, dropping the lowest quiz grades (including quizzes receiving scores of 0 due to absence). I reserve the right to amend the number of quizzes, but any alteration will be clearly announced. While these *quizzes should be expected at the start of each chapter*, I reserve the right to amend the schedule as needed. **Under no circumstances are students able to make up quizzes.**

Participation: Twice during the semester, each student is required to teach a Supreme Court case to the class. Students will select their preferred cases from the syllabus at the beginning of the semester. Students will be evaluated based upon the completion and performance of their presentation(s).

Case Brief: Each student is required to submit a case brief (one page, typed, in hard copy format) on a case of their choice on September 14th. Page 9 on the syllabus discusses how to brief a case, and this is the standard to which briefs will be evaluated. This brief must be original work, without the use of online and published case briefs. Any brief that plagiarizes existing work will receive a zero. This assignment is designed to aid reading comprehension and retention, introduce legal writing, and prepare for exams. Creating case briefs for each case is highly recommended as a study technique for quiz and exam preparation.

Revisions to the case brief are due September 21nd along with the original, graded case brief. These revisions must correct the errors identified in the original assignment. The adequate completion of these revisions will return up to half of the points lost on the original assignment. For example, if the original assignment earned 80 points, then up to 10 points may be added back to the grade (for a 90). You must return the original assignment with the revisions for credit.

Moot Court Simulation: Students will participate in a moot court simulation and will be evaluated upon the rubric and their reflections provide in the syllabus (pages 13-14). The final moot court simulation grade will be calculated based upon the average of the student's performance and reflection.

Separation of Powers Paper: Each student is required to submit a 10-15 page paper (typed, in hard copy format) on **September 28th** discussing the American separation of powers structure and how it is affected, if at all, by the rise of international law. This paper must define and describe the separation of powers structure and address how international obligations and international laws affect this domestic structure. (For example, does international law undermine the American separation of powers?). What role, if any, should international law play in American courts' determination of legal policy? Each paper must provide evidence and citations. You must include references (but these are not included in the page limitations). This paper will be evaluated on the merits of arguments, level of research, organization and clarity of writing, grammar and spelling, and the thoroughness of arguments and counterarguments. The rubric for evaluation is attached to the syllabus (pages 10- 12).

Revisions to this paper are due October 31st along with the original, graded paper. These revisions must correct the errors identified in the original assignment. The adequate completion of these revisions will return up to half of the points lost on the original assignment. For example, if the original assignment earned 80 points, then up to 10 points may be added back to the grade (for a 90). You must return the original assignment with the revisions for credit.

SPECIAL NEEDS

If you have a disability and need classroom accommodations, please contact The Center for Accommodations and Support Services (CASS) at 747-5148, or by email to cass@utep.edu, or visit their office located in UTEP Union East, Room 106. For additional information, please visit the CASS website at www.sa.utep.edu/cass. *CASS' Staff are the only individuals who can validate and if need be, authorize accommodations for students with disabilities.* Additionally, students with special needs **must** contact me in order to arrange appropriate accommodations.

ACADEMIC DISHONESTY

Absolutely no form of academic dishonesty will be tolerated. The University of Texas at El Paso prides itself on its standards of academic excellence. In all matters of intellectual pursuit, UTEP faculty and students must strive to achieve excellence based on the quality of work produced by the individual. In the classroom and in all other academic activities, students are expected to uphold the highest standards of academic integrity. Any form of scholastic dishonesty is an affront to the pursuit of knowledge and jeopardizes the quality of the degree awarded to all graduates of UTEP. It is imperative, therefore, that the members of this academic community understand the regulations pertaining to academic integrity and that all faculty insist on adherence to these standards.

Any student who commits an act of scholastic dishonesty is subject to discipline. Scholastic dishonesty includes, but is not limited to, cheating, plagiarism, collusion, the submission for credit of any work or materials that are attributable in whole or in part to another person, taking an examination for another person, and any act designed to give unfair advantage to a student or the attempt to commit such acts. Proven violations of the detailed regulations, as printed in the Handbook of Operating Procedures (HOP) and available in the Office of the Dean of Students and the homepage of The Dean of Students at www.utep.edu/dos, may result in sanctions ranging from disciplinary probation, to failing a grade on the work in question, to a failing grade in the course, to suspension or dismissal, among others.

GENERAL EXPECTATIONS

I expect all students to behave professionally in this class. You will be held responsible for all material covered in the textbooks, articles, videos, and the class discussions. If you miss a class, you are still responsible for the content of that day's information. I will not tolerate disruptive behavior, including (but not limited to) reading newspapers, talking during lectures, using cell phones or pagers, and disrespecting classmates or the instructor. Additionally, I expect all students to attend class prepared and to show up on time. It is disrespectful to the instructor and the other students when individuals show up late or are not prepared to participate in the class discussion. I allow the use of laptops for note-taking purposes only; however, should laptop usage become disruptive, I reserve the right to prohibit laptops and other electronic devices.

This class is designed to provide information and challenge students with new,

sometimes controversial, ideas, and arguments. This class is designed to be a safe, open environment to express ideas, arguments, and opinions for learning purposes. This class is designed to initiate an open discussion based upon the required readings, encourage critical thinking and application to current events, and enable students to digest difficult material through these discussions. This class DOES NOT give you knowledge—i.e. knowledge and understanding is not transfused to students by simply sitting in class. **Learning is an interactive process and one that is the primary responsibility of each student.**

Late assignments will receive no credit.

All grades are earned and reflect your reflect the mastery of material through the adequate completion of assignments by their deadline. As such, they do not reflect level of effort, interest, or intention. **I will not change final grades for the course under any circumstances,** with the single exception of cases where an error occurred.

COURSE SCHEDULE

The following is a list of topics to be covered at each class meeting, and the readings which should be completed in order to fully participate in class that day. I **require** you to read the material prior to the class since you will be expected to participate in the discussion. *Cases not included in the textbook but listed on syllabus are the responsibility of students to locate (online) and read.* Exam material will consist of assigned readings and information covered during assignments and the class discussion. Finally, while I give specific days on which certain topics will be discussed, the calendar is subject to change. Any alterations to the course schedule will be clearly announced. (As a general rule the course will follow this order of topics, regardless of date changes, unless otherwise announced.)

August	22	Distribute Syllabus and Introduction
	24	Supreme Court Overview Epstein and Walker 3-47
	29	Supreme Court Overview: Opinions
	31	Institutional Authority and the Judiciary Epstein and Walker 51-89 Cases: <i>Marbury v. Madison</i> <i>Martin v. Hunter's Lessee</i> <i>Cohens v. Virginia</i> (found online) <i>Eakin v. Raub</i>
September	5	No Class (Labor Day)

	7	The Judiciary and Jurisdiction Epstein and Walker 89-119 Cases: <i>Ex parte McCardle</i> <i>Flast v. Cohen</i>
	12	The Legislative Branch Epstein and Walker 120-182 Cases: <i>Powell v. McCormack</i> <i>U.S. Term Limits v. Thornton</i> <i>Gravel v. United States</i> <i>Watkins v. United States</i> <i>Barenblatt v. United States</i>
	14	The Legislative Branch (cont) <u>Due: Case Brief</u>
	19	The Executive Branch (Domestic Authority) Epstein and Walker 183-256 Cases: <i>Clinton v. City of New York</i> <i>Morrison v. Olson</i> <i>Myers v. United States</i> <i>Humphrey's Executor v. United States</i> <i>United States v. Nixon</i> <i>Clinton v. Jones</i> <i>Schechter Poultry Corp. v. United States</i> (E&W 418-423)
	21	The Executive Branch (Domestic Authority) (cont) <u>Due: Case Brief Revision</u>
	26	Review for Midterm Exam 1
	28	Midterm Exam 1
October	3	The Executive Branch (Foreign Affairs) Epstein and Walker 257-322 Cases: <i>The Prize Cases</i> <i>Ex parte Milligan</i> <i>Ex parte Quirin</i> <i>Korematsu v. United States</i> <i>United States v. Curtiss-Wright Export</i> (p 171 and 253) <i>Youngstown Sheet & Tube Co. v. Sawyer</i> <i>Hamdi v. Rumsfeld</i> (found online) <i>Hamdan v. Rumsfeld</i>

- 5 The Executive Branch (Foreign Affairs) (cont)
- 10 Federalism
 Epstein and Walker 325-391
 Cases: *McCulloch v. Maryland*
Hammer v. Dagenhart
National League of Cities v. Usery
Garcia v. San Antonio Metro. Transit Authority
Hammer v. Dagenhart
New York v. United States
Missouri v. Holland
Chisholm v. Georgia (found online)
Seminole Tribe of Florida v. Florida (found online)
Arizona v. United States
- 12 Federalism (cont)
Due: Separation of Powers Paper
- 17 Federalism (cont)
- 19 Moot Court
- 24 Commerce Clause
 Epstein and Walker 392-425
 Cases: *Gibbons v. Ogden*
U.S. v. E. C. Knight Co.
Stafford v. Wallace
Carter v. Carter Coal Co. (found online, see also p. 425)
- 26 Commerce Clause (cont)
 Epstein and Walker 425-502
 Cases: *NLRB v. Jones & Laughlin Steel Corp.*
United States v. Darby Lumber (E&W 365-367)
Wickard v. Filburn
Heart of Atlanta Hotel v. United States
United States v. Lopez
United States v. Morrison
Gonzales v. Raich
National Federation of Independent Business v. Sebelius
Cooley v. Board of Wardens
Southern Pacific Railroad Co. v. Arizona
Granholt v. Heald
- 31 Commerce Clause (cont)
Due: Separation of Powers Paper Revision

November	2	Commerce Clause (cont)
	7	Review for Midterm Exam 2
	9	Midterm Exam 2
	14	Contract Clause Epstein and Walker 569-605 Cases: <i>Fletcher v. Peck</i> <i>Dartmouth College v. Woodward</i> <i>Charles River Bridge v. Warren Bridge</i> <i>Home Building and Loan Assoc. v. Blaisdell</i>
	16	Substantive Due Process Epstein and Walker 606-662 Cases: <i>The Slaughterhouse Cases</i> <i>Munn v. Illinois</i> <i>Lochner v. New York</i> <i>Muller v. Oregon</i> <i>Adkins v. Children's Hospital</i> <i>Nebbia v. New York</i> <i>West Coast Hotel v. Parrish</i> <i>Williamson v. Lee Optical Company</i>
	21	Substantive Due Process (cont)
	23	Takings Clause Epstein and Walker 663-695 Cases: <i>United States v. Causby</i> <i>Penn Central Transportation Co. v. City of New York</i> <i>Berman v. Parker</i> <i>Hawaii Housing Authority v. Midkiff</i> <i>Kelo v. City of New London</i>
	28	Takings Clause (cont)
	30	Last Day of Class Final Exam Review
December	2	Dead Day
	5	Final Exam 1:00pm-3:45pm

NOTES ON HOW TO “BRIEF” A CASE

All students are encouraged to take notes on each case in the form of a “brief.” Taking notes following the outline below will not only help you understand the essential points of each case, but they will also assist you in preparing for the exams. Success in this course can be greatly enhanced by following the guidelines below.

1. *Background Information and Case Facts:* Note the litigants in each case as well as the citation of the case. State the facts of a particular case in as much detail as possible and necessary. Be sure to include key statutes or portions of the Constitution that are at issue.
2. *Central Issues:* State the central issue(s) in the case in the form of a question that can be answered “yes” or “no.” For example,
 - (a) Is it legitimate for a state to ban all abortions in public hospitals?
 - (b) Does the President of the United States have absolute immunity from all civil suits?
3. *Why:* Why did the Court decide the case this way? Here you should note the reasons given by the majority for their decision. Take careful note to make sure the opinion is a majority opinion and not a plurality opinion. A majority opinion is one agreed to by a majority of the Court, whereas a plurality opinion is one agreed to by more justices than agree with another opinion. You should note which justices join the majority (or plurality) opinion.
4. *Other Opinions:* Is there a concurring opinion (or more than one) or a dissenting opinion (or more than one)? A concurring opinion is one where a justice agrees with the outcome of a particular case but disagrees with the reasons given by the Court. A dissenting opinion is one where the justice disagrees with the outcome of the case and writes to express this disagreement. You should note what these opinions say. You should also note if other justices join a concurring opinion or dissenting opinion.
5. *Principles of Law:* You should try to summarize the principles of law in the case in one statement. For example, in (b): The President of the United States is absolutely immune from civil suits concerning his activities as President.
6. *Put the Case in Perspective:* Put the case in context: How is it similar to previous cases on the issue? How does it differ? Did the Court overrule a previous decision (precedent) or did it just not extend a previous ruling? What are the implications of the Courts decision? That is, how will this case affect future rulings?

Grading Rubric for Written Assignments

Student's Name: _____

Date: _____

Assignment: _____

Course: _____

4=A 3=B 2=C 1=D 0=F

Writing Characteristic	Performance Descriptions	Performance Level
Follows Directions	4= responds fully and appropriately to the assignment in timely fashion 3= responds reasonably well to assignment in timely fashion 2= responds acceptably to assignment in timely fashion 1= some significant failure to respond to assignment, or untimely 0= wholly fails to respond to assignment, and/or untimely	
Thesis	4= easily identifiable, clear and concise, insightful, and appropriate for assignment 3= identifiable, clear, and appropriate 2= somewhat difficult to identify, unclear, and/or slightly inappropriate for assignment 1= very difficult to identify, unclear, and/or inappropriate for assignment 0= unidentifiably, unclear, and/or wholly inappropriate for assignment	
Use of Evidence	4= appropriate source information (typically primary) used to support thesis and buttress all arguments made in essay, excellent integration of quoted/paraphrased material into writing. 3= appropriate source information used to support thesis and to buttress most arguments, good integration of sources into writing 2= sometimes weak use of source information (excessively secondary), inadequately supports thesis and/or sub-arguments, weak integration of quoted/paraphrased material into writing 1= very weak use of source information (excessively secondary), fails to support thesis and/or sub-arguments, very weak integration of material into writing 0= wholly failures to use sources appropriately	
Analysis, Logic and Argumentation	4= all ideas progress logically from an identifiable thesis, compelling justifications are offered to support thesis, counter-arguments are anticipated and addressed, appropriate connections are made to outside material 3= thesis is generally supported by logically compelling assertions and appropriate connections 2= insufficient support for some arguments, assertions are vague or lack focus, support offered is sometimes irrelevant, tangential or repetitive 1= lacks support for arguments, unfocused, uses irrelevant information to support thesis 0= wholly fails to related evidence to thesis statement	
Organization	4= coherent and clear, all paragraphs support thesis statement, each paragraph supports its topic sentence, excellent transitions 3= mostly coherent, generally supports thesis, good transitions 2= often lacks coherence, mixed support for thesis, transitions often missing or weak 1= incoherent, lacks support for thesis, transitions weak and often missing 0= wholly incoherent, unsupportive of thesis and lacking in transitions	
Mechanics (Grammar, Spelling, Language Usage, Sentence Structure, Citation Format)	4= excellent command of language, proper use of grammar/writing conventions, few to no misspelled words, correct word choice, excellent variety and complexity of sentence structure, uses proper citation format 3= good command of language, generally proper use of grammar/writing conventions, minimal misspelled words, largely good word choice, some variety and complexity in sentence structure, generally uses proper citation format 2= generally proper use of grammar/writing conventions, but with simple sentences generally lacking variety/complexity in structure, acceptable citation format 1= weak use of language, poor grammar, and numerous mechanical errors undermine coherence, weak citation format 0= extremely weak use of language/poor grammar, and pervasive errors seriously undermine coherence, improper citation format	
Grade		
Additional Comments:		

Understanding Letter Grades on Essay Assignments

A papers excel in each of the following categories:

Follows Directions:	<ul style="list-style-type: none"> responds fully and appropriately to the assignment in timely fashion
Thesis	<ul style="list-style-type: none"> easily identifiable, clear and concise, insightful, and appropriate for assignment
Use of Evidence	<ul style="list-style-type: none"> appropriate source information (typically primary) used to support thesis and buttress all arguments made in essay, excellent integration of quoted/paraphrased material into writing.
Analysis, Logic and Argumentation	<ul style="list-style-type: none"> all ideas progress logically from an identifiable thesis, compelling justifications are offered to support thesis, counter-arguments are anticipated and addressed, appropriate connections are made to outside material
Organization	<ul style="list-style-type: none"> coherent and clear, all paragraphs support thesis statement, each paragraph supports its topic sentence, excellent transitions
Mechanics (Grammar, Spelling, Language Usage, Sentence Structure, Citation Format)	<ul style="list-style-type: none"> excellent command of language, proper use of grammar/writing conventions, few to no misspelled words, correct word choice, excellent variety and complexity of sentence structure, uses proper citation format

B papers do a generally good job in each of the following categories:

Follows Directions	<ul style="list-style-type: none"> responds reasonably well to assignment in timely fashion
Thesis	<ul style="list-style-type: none"> identifiable, clear, and appropriate
Use of Evidence	<ul style="list-style-type: none"> appropriate source information used to support thesis and to buttress most arguments, good integration of sources into writing
Analysis, Logic and Argumentation	<ul style="list-style-type: none"> thesis is generally supported by logically compelling assertions and appropriate connections
Organization	<ul style="list-style-type: none"> mostly coherent, generally supports thesis, good transitions
Mechanics (Grammar, Spelling, Language Usage, Sentence Structure, Citation Format)	<ul style="list-style-type: none"> good command of language, generally proper use of grammar/writing conventions, minimal misspelled words, largely good word choice, some variety and complexity in sentence structure, generally uses proper citation format

C papers are acceptable, but lack strength, in each of the following categories:

Follows Directions	<ul style="list-style-type: none"> • responds acceptably to assignment in a timely fashion
Thesis	<ul style="list-style-type: none"> • somewhat difficult to identify, unclear, and/or slightly inappropriate for assignment
Use of Evidence	<ul style="list-style-type: none"> • sometimes weak use of source information (excessively secondary), inadequately supports thesis and/or sub-arguments, weak integration of quoted/paraphrased material into writing
Analysis, Logic and Argumentation	<ul style="list-style-type: none"> • insufficient support for some arguments, assertions are vague or lack focus, support offered is sometimes irrelevant, tangential or repetitive
Organization	<ul style="list-style-type: none"> • often lacks coherence, mixed support for thesis, transitions often missing or weak
Mechanics (Grammar, Spelling, Language Usage, Sentence Structure, Citation Format)	<ul style="list-style-type: none"> • generally proper use of grammar/writing conventions, but with simple sentences generally lacking variety/complexity in structure, acceptable citation format

D papers are weak in each of the following categories:

Follows Directions	<ul style="list-style-type: none"> • some significant failure to respond to assignment or untimely
Thesis	<ul style="list-style-type: none"> • very difficult to identify, unclear, and/or inappropriate for assignment
Use of Evidence	<ul style="list-style-type: none"> • very weak use of source information (excessively secondary), fails to support thesis and/or sub-arguments, very weak integration of material into writing
Analysis, Logic and Argumentation	<ul style="list-style-type: none"> • lacks support for arguments, unfocused, uses irrelevant information to support thesis
Organization	<ul style="list-style-type: none"> • incoherent, lacks support for thesis, transitions weak and often missing
Mechanics (Grammar, Spelling, Language Usage, Sentence Structure, Citation Format)	<ul style="list-style-type: none"> • weak use of language, poor grammar, and numerous mechanical errors undermine coherence, weak citation format

F papers are unacceptable, failing in each of the following categories:

Follows Directions	<ul style="list-style-type: none"> • wholly fails to respond to assignment given, and/or untimely
Thesis	<ul style="list-style-type: none"> • unidentifiably, unclear, and/or wholly inappropriate for assignment
Use of Evidence	<ul style="list-style-type: none"> • wholly failures to use sources appropriately
Analysis, Logic and Argumentation	<ul style="list-style-type: none"> • wholly fails to related evidence to thesis statement
Organization	<ul style="list-style-type: none"> • wholly incoherent, unresponsive of thesis and lacking in transitions
Mechanics (Grammar, Spelling, Language Usage, Sentence Structure, Citation Format)	<ul style="list-style-type: none"> • extremely weak use of language/poor grammar, and pervasive errors seriously undermine coherence, improper citation format

Moot Court Rubric

Criteria	Exemplary (3)	Proficient (2)	Developing (1)	Nascent (0)
Shows evidence of knowledge: --historic --constitutional --facts of case	Student links the facts of the case to relevant constitutional issue and historic events.	Student links the facts of the case to relevant constitutional issue and attempts to make a connection with historic events.	Student links the facts of the case to relevant constitutional issue but does not attempt to make connections with historic events.	Student did not participate.
Uses precedent	Student uses relevant precedent cases to support each argument.	Student uses relevant precedent cases to support most arguments.	Student uses precedent case to support at least one argument.	Student does not use precedent or misinterprets precedents.
Recognizes significance of the case	In each argument, student makes convincing case as to why the argument is compelling in terms of how it affects the national interest.	For most arguments, student makes case as to why the argument is compelling in terms of how it affects the national interest.	Student attempts to make case as to why one argument is compelling in terms of how it affects the national interest.	Student does not make case as to why arguments are compelling or makes an argument based on errors.
Argues convincingly	Student inhabits the assigned role and presents relevant and compelling arguments clearly.	Student takes on the assigned role but may occasionally be diverted from the role. Student presents relevant arguments clearly.	Student shows some behaviors of the assigned role. Student present arguments that are sometimes difficult to understand.	Student did not participate.
Team Work	Worked very effectively with other students, helping others when appropriate.	Worked effectively with other students.	Did not work effectively with other students.	Did not participate.

Grade: _____ / 15