

**UNIVERSITY OF PENNSYLVANIA
THE WHARTON SCHOOL
LEGAL STUDIES 221-001**

CONSTITUTIONAL LAW AND FREE ENTERPRISE

Fall 2012 – PROFESSOR SEPINWALL

OVERVIEW: The economy of the United States -- the structure of our whole society, in fact -- is based upon the cherished and celebrated concept of free enterprise. Our free enterprise system, regarded by many as a model for the entire world, rests, in turn, on a foundation of personal freedoms and rights guaranteed by the U.S. Constitution, the core document of our legal and governmental systems. The history of our nation's economic system is inextricably intertwined with the development of our constitutional jurisprudence. The study of each side of that pairing is necessary for full understanding of the other.

This course starts with an examination of the U.S. Constitution and the structure and relationship of the governmental entities it establishes and upon which it depends. Special attention is given to the role of the federal courts, especially the Supreme Court, in the interpretation and implementation of constitutional principles. From this foundation, the course moves through an exploration of the major economic and business implications of constitutional law in different eras of the nation's history.

The course seeks to address three key issues: First, to what extent does the Constitution allow Congress to regulate the economy? May Congress place limits on gun use, or violence against women, in the name of protecting commerce? May it compel people to buy health insurance in order to do so? May the government interfere with private contracts? May it seize private property on the pretext that the public would benefit therefrom?

Second, what are the rights of businesses under the Constitution? Should advertising receive weaker freedom of speech protections than, say, newspaper articles? What role should corporations play in politics? May a healthcare company deny certain medical services – e.g., abortions or end-of-life treatments – on the ground that it has constitutionally-protected rights guaranteeing its freedom of (religious) belief?

Third, where does the notion of free enterprise come from, and what does it entail? How far should personal and economic liberties extend? How much control should individuals enjoy over their bodies? Should individuals be permitted to buy guns or recreational drugs? Should businesses be permitted to hire whomever they wish, even if that means discriminating against women and racial minorities, or the elderly, ugly, etc.?

CLASS MEETS: Tues-Thurs. 10:30 AM – 11:50 AM

PROFESSOR: Amy Sepinwall

CONTACT INFO: 642 Jon M. Huntsman Hall

E-mail: sepin@wharton.upenn.edu

OFFICE HOURS: By appointment

MATERIALS: *CONSTITUTIONAL LAW FOR A CHANGING AMERICA: A SHORT COURSE, 5th Edition*, by Lee Epstein & Thomas Walker (Congressional Quarterly, Inc., 2005). This book is available at the **Penn Bookstore**. Additional materials will be supplied in downloads from the course website.

COURSE FORMAT: Lecture, Socratic dialogue, and class discussion. Class participation is expected and is graded.

GRADING: Judicial bio presentation = 10%; Midterm exam = 30%; Final exam = 40%; Film assignment = 10%; Participation (attendance, preparation, and contribution to class discussions) = 10%

Note: Please notify the instructor in advance if you expect to miss a class. Properly justified absences will be excused.

Judicial Bio Presentation: Each of you will be assigned a Supreme Court Justice (current or past). You will be responsible for creating a biography of your Justice and presenting that biography in class. The biography should describe the Justice's educational and professional history; judicial philosophy; the Justice's role in two noteworthy cases; and include at least one fun fact. The biography should be presented in power point form. Your presentation **may not exceed 5 minutes**. Please email your power point slides to me by **10 PM on Wednesday, September 19, 2012**.

Film Assignment: We will have a class movie night, to view the film *The Corporation*. The provisional date for the movie night is **6:15 PM on October 25, 2011**. Those of you who are unable to attend will be responsible for seeing the film on your own. (The film is available at Van Pelt, or through Netflix and iTunes.) The assignment requires that you send me, via email, three questions raised by the film that would be suitable for spurring a class discussion on October 30, 2012. The questions should demonstrate that you have seen the film (e.g., they should not be unduly vague), and they should invite us to reflect on issues of corporate personhood raised by the film. These issues may connect with class materials, but they need not do so. Do not answer the questions; the purpose of these questions is to inform our class discussion. I must receive your email by **10 PM on October 28**. ***Please send your film assignment in the body of an email, and not as an attachment.***

Midterm Exam: The midterm exam will be held on in class on **October 18, 2012**. It will cover material up to and including the class session on October 16, 2012. The midterm is designed to test your analytic skills and assimilation of covered class materials.

Final Exam: The final exam will be held on **Thursday, December 13, 2012 at 9 AM**. The final exam will consist of a combination of multiple-choice, fill-in-the-blanks, short-answer and essay questions, and cover material from the entire course.

CANVAS: There will be a course website on Canvas, available at (TBD). The website will contain readings outside of the textbooks as well as other reference or supplemental material. Further details to follow.

Students should check their e-mail at least daily; the instructor will do so too. Please take care when replying not to reply to the whole class.

Course Policies:

1. **Late assignments:** There is a 15-minute grace period for your judicial bio assignment and your film assignment. Absent a legitimate excuse, for which you have received prior approval from me, the following penalties will be assessed against late assignments: Assignments submitted within the first 24 hours following the grace period will receive a 2-point deduction; assignments submitted more than 24 hours after the grace period will receive a zero.
2. **Make-up exams:** A make-up midterm or final exam will be offered only if you have provided me with a doctor's note stating that you were too ill to write the exam at the appointed time. In exceptional circumstances, a make-up midterm or final exam will be offered for other reasons (e.g., a death in the family), but only with my prior approval.
3. **In-class conduct:** In order to ensure your full engagement, you may not use any electronic device during class (no laptops, no tablets, no cell phones). I welcome disagreement in our class discussions but I nonetheless expect that these will proceed with a tone of civility and respect for one another.
4. **Non-Wharton Students:** A Wharton account is required for this course. To obtain a Wharton account, please visit <http://accounts.wharton.upenn.edu>.
5. **Interacting outside of class:** In the past, I have found it instructive, and very fun, to interact informally with small groups of students outside of class. I will look forward to

doing so this semester with any and all who are interested. To that end, I will schedule a series of lunches for 3-4 students at a time. Stay tuned for further details!

COURSE OUTLINE & READING ASSIGNMENTS

LGST 221 (SEPINWALL) – Fall Term 2012

*All readings designated with a * can be found on Canvas. All others are drawn from the textbook.*

INTRODUCTION TO THE CONSTITUTION AND CONSTITUTIONAL STRUCTURE

- 9/6 Part I: The U.S. Constitution
 Introduction: course overview
 In-class exercise: Brown v. Board of Education
- 9/11 The Living Constitution and Understanding the Supreme Court
 Reading: Chs. 1&2, pp. 1-51
- 9/13 Part II: Institutional Authority
 Structuring the Federal System & The Judiciary
 Reading: Intro, pp. 57-62 & Ch. 3, pp. 57-84
- 9/18 **No class**
- 9/20 The Supreme Court Justices: Personnel and Philosophy
 Reading: Internet bios for current Justices, at
 <http://www.oyez.org/courts/robt6> and
 <http://www.law.cornell.edu/supct/justices/fullcourt.html>

In-class presentations

- 9/25 Institutional Authority
 The Legislature
 Reading: pp. Ch. 4, pp. 87-90, 101-109 (until “Power to investigate”),
 pp. 179-185
 The President
 Reading: p. 127, pp. 141-176

PART I: CONGRESSIONAL POWER AND THE ECONOMY

- 9/27 The Commerce Clause: May Congress use its power to regulate commerce to further social policy or social engineering?
Reading: pp. 211-247
- 10/2 The Commerce Clause (cont'd)
Reading: pp. 247-251
United States v. Morrison, excerpts*
- 10/4 The Power to Tax and the Contracts Clause
Tax Reading: pp. 257-266 (until “Intergovernmental Tax Immunity”)
Contracts Reading: pp. 277-296
- 10/9 The Commerce Clause and the Power To Tax: May Congress compel individuals to buy health insurance?
Reading: The Affordable Care Act case*
- 10/16 The Takings Clause
Reading: pp. 319-338
- 10/18 **Midterm – In class**

PART II: INDIVIDUAL AND CORPORATE RIGHTS

- 10/25 No class at 10:30
- 10/25 **Movie night – 6:15 PM** (Location TBA; pizza and drinks served)
- 10/28 **Film assignment due – 10 PM** (see details above)
- 10/30 Are corporations persons?
Reading: Peter French, The Corporation As a Moral Person*
In-class discussion of *The Corporation*
- 11/1 Civil Liberties – pp. 341-343
General free speech doctrine

Reading: pp. 397-436

- 11/6 Commercial speech: May cigarette companies be compelled to publish warning labels?
 Reading: Discount Tobacco City v. United States (2012)*
 R. J. Reynolds v. FDA (2012)*
- 11/8 The right not to speak: When may private entities be compelled to host speech with which they disagree?
 Reading: pp. 436 (“Expressive association”)-442; Pruneyard Shopping Center v. Robins*
- 11/13 Freedom of Assembly and Conscience: Can corporations deny information about abortion services on freedom of conscience grounds?
 Reading: The Hyde-Weldon Amendment*;
 Executive Order accompanying passage of the Affordable Care Act*
- 11/15 Freedom of the Press
 Reading: pp. 443-478; Florida Star v. B.J.F.*
- 11/20 Campaign Finance and Corporate Political Activity
 Reading: pp. 659-666

PART III: ECONOMIC LIBERTIES AND CIVIL RIGHTS

- 11/27 Economic Substantive Due Process and Laissez-Faire Policies
 Readings: pp. 297-316 & Ch. 9, pp. 195-210
- 11/29 The Right to Do “Wrong”
 Gun control – pp. 479-487
 Birth control – pp. 489-513
- 12/4 The Right to Do “Wrong” (cont’d)
 Sodomy, drugs, physician-assisted suicide – pp. 513-527
- 12/6 Equal Protection and Employment Discrimination; Course Review
 Reading: pp. 593-622 (until “Economic Discrimination”)
 Kenji Yoshino, “The Pressure to Cover”*
 Barbara Fanfan, “Workplace Obesity, Weight Discrimination, Addiction Issues, and Employment Law”*