

Course Syllabus

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Information Sheet for LS 138

Supreme Court and Public Policy

Fall 2019

Professor Ben Brown

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Office hours: Monday, Wednesday 11:30 – 12:30

Room 212, Legal Studies Building, 2240 Piedmont

Grading:

Grades will be based on four factors:

Mid-Term Exam – 25%

Discussion Section assignments and participation – 15%

Analytical Essay – 20%

Final exam – 40%

Materials:

The cases and other readings assigned on the syllabus are all available on my website:

<http://www.benbrownshistoryandlaw.com/> (<http://www.benbrownshistoryandlaw.com/>)

Linda Greenhouse has written an accessible description of the Supreme Court – *The U.S Supreme Court: A Very Short Introduction* (**required reading, book you must purchase**).

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Reference materials:

Peter Irons, *A People's History of the Supreme Court*, presents the important cases with a concentration on the Justices and parties.

Kermit Hall edited two good encyclopedias of the Supreme Court and American law: Kermit Hall, *The Oxford Companion to the Supreme Court of the United States* and *The Oxford Companion to American Law*.

For an overview of constitutional history see Melvin Urofsky and Paul Finkleman, *A March of Liberty: A Constitutional History of the United States*.

A fun-to-read journalistic account of the Court in the 1990s and early 2000s is Jeffrey Toobin's *The Nine* or his latest book on the Roberts Court, *The Oath*.

To see transcripts of U.S. Supreme Court oral arguments and to hear audio of some of these oral arguments, go to: <http://www.oyez.org/>.

To find complete copies of the edited cases that I have provided go to <http://www.findlaw.com> or search the Lexis database in the library's database collection. For a good online glossary of legal terms, go to <http://www.nolo.com/glossary.cfm> (<http://www.nolo.com/glossary.cfm>).

Syllabus for LS 138

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Supreme Court cases, underlined below, are on a separate tab on my website and are arranged alphabetically. Other materials are on the LS 138 tab and arranged in the order that we will address them.

Week of August 26 – Introduction to Supreme Court

Readings –Linda Greenhouse, *The U.S Supreme Court: A Very Short Introduction* (**book you must purchase**); Orin Kerr, "How to Read a Legal Opinion;" Alexander Hamilton, Federalist # 78; "Brutus's" 15th essay, The New-York Journal on March 20, 1788; *Hollow Hope*, Chapter 1.

August 26 – No class.

August 28 - Introduction to the Supreme Court and its role in U.S. government.

August 30 - Brief history of the power of the Supreme Court to 1950; Constrained Court v. Dynamic Court debate.

Week of September 2 – Advocating for Racial Integration

Readings – Plessy v. Ferguson; Sweatt v. Painter; Brown v. Board of Education; Mary L. Dudziak, “The Court and Social Context in Civil Rights History;” Michael Klarman, “Brown v. Board of Education: Law or Politics.”

September 2 – Labor Day, no class.

September 4 – Supreme Court and Public Segregation - creation of Jim Crow.

September 6 – NAACP attack on public segregation through the courts.

Week of September 9 – Brown v. Board: Decision, Implementation, Resistance

Readings –Michael Klarman, “Why Massive Resistance;” Cooper v. Aaron.

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September 9 – Brown v. Board - argument and decision.

September 11– Establishing the meaning of Brown v. Board - Brown II and the Montgomery Bus Boycott.

September 13 – Massive resistance.

Week of September 16 – Supreme Court Limits on Brown

Readings – San Antonio Independent School District v. Rodriguez; Milliken v. Bradley; Parents Involved v. Seattle School District; Mapp v. Ohio; Gideon v. Wainwright; Miranda v. Arizona.

September 16 – Limiting **Brown v. Board** and Constitutionalizing White Flight.

September 18 – Reversing **Brown v. Board** and conclusions from Public Segregation Battles.

September 20 – Warren Court and Criminal Constitutional Rights.

Week of September 23 – Enforcing Rights (or not)

Readings – **Terry v. Ohio**; Sara Mayeux, “What Gideon Did.”

September 23 – The attack on the Warren Court. Creating Loopholes – Search and Seizure.

September 25 – Effective Right to Counsel, Problem of Bail.

September 27 – TBD

Week of September 30 – Lessons from Criminal Constitutional Law

Readings – Michelle Alexander on the New Jim Crow – interview on Fresh Air;
<https://www.npr.org/2012/01/16/145175694/legal-scholar-jim-crow-still-exists-in-america>
(<https://www.npr.org/2012/01/16/145175694/legal-scholar-jim-crow-still-exists-in-america>)

United States v. Whren; **McCleskey v. Kemp**; Tina Peng, “I’m a public defender...”

September 30 – Politics and Mass Incarceration.

October 2 – The New Jim Crow.

October 4 – Lessons from Criminal Constitutional Law.

Week of October 7 – Court and Vote Equalization

Readings – South Carolina v. Katzenbach; Reynolds v. Sims.

October 7 – Midterm Exam.

October 9 – VRA, One person, One vote.

October 11 – Gerrymandering in reaction to Reynolds. Voter ID laws and other voter suppression laws.

Week of October 14 – Voting Rights, conclusion; Reproductive Rights.

Readings – Davis v. Bandemer; Shelby County v. Holder; Rucho v. Common Cause; Sarah Weddington's argument to Court in Roe; Roe v. Wade.

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October 14 – Roberts Court attack on VRA and constitutionality of political gerrymandering. Pennsylvania Supreme Court Gerrymander decision.

October 16 – Roe v. Wade – background and argument.

October 18 – Role of lawyering and Blackmun's opinion in Roe.

Week of October 21 – Political Attack on Roe and Court's compromise

Readings – Planned Parenthood v. Casey (identified as "Casey" on website); Gonzales v. Carhart; Robert Post and Reva Siegel, "Roe Rage: Democratic Constitutionalism and Backlash."

October 21 – Political attacks on Roe and ERA; First cases interpreting Roe.

Analytical Essay Assigned on October 21

October 23 – Sandra Day O’Conner and “saving” Roe in Casey.

October 25 – State regulatory reaction to Casey; Carhart.

Week of October 28 – Roe Rage and Gun Rights

Readings – Review “Roe Rage” for your analytical essay.

October 28 – Lessons from Roe.

October 30 – Gun Rights in early and mid-20th century; Black Panthers.

November 1 – NRA and Federalist Society – Originalism as a backlash against Warren Court.

Week of November 4 – Heller and its legacy

Readings – District of Columbia v. Heller; Posner on Heller; Reva Siegel, “Dead or Alive: Originalism as Popular Constitutionalism in Heller.” (identified as “Heller and Originalism” on website); Nelson Lund on Heller.

Analytical Essay due – November 4

November 4 – Originalism and the 2nd Amendment.

November 6 – **Heller**, argument, decision and academic reaction.

November 8– Incorporating the 2nd Amendment and current gun policy

Week of November 11 – Gay Rights and Gay Marriage

Readings – Bowers v. Hardwick; Defense of Marriage Act; Romer v. Evans; Lawrence v. Texas.

November 11 – Veterans Day, no class.

November 13 – Gay rights in mid-20th century, AIDS epidemic.

November 15 – Ratifying sodomy laws, **Bowers** and **Romer**.

Week of November 18 – The unlikely victory of Gay Marriage Rights.

Readings – Perry v. Schwarzenegger; Staged reading of edited Perry. Transcript: [“8";: A Play about the Fight for Marriage Equality”](https://www.youtube.com/watch?v=q!UG8F9uVgM) (<https://www.youtube.com/watch?v=q!UG8F9uVgM>)



<https://www.youtube.com/watch?v=q!UG8F9uVgM>

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United States v. Windsor (identified as “Windsor” on website).

November 18 – Kennedy and **Lawrence** – case and reasoning.

November 20 – Gay Marriage in the states, Defense of Marriage Act.

November 22 – California, Prop 8 and **Perry**.

Week of November 25 – The unlikely victory of Gay Marriage Rights, continued.

Readings – Obergefell v. Hodges

November 25 – Gay marriage after **Perry**.

November 27 and 29 – Thanksgiving break, no class.

Week of December 2 – Lessons from History; How Effective is the Supreme Court in Influencing Public Policy?

Readings – Masterpiece Cakeshop v. Colorado Civil Rights Commission; Erwin Chemerinsky, “Thinking about the Supreme Court’s Successes and Failures.”

December 2 – Wedding Cakes and Religious Liberty – How protected are Gay Rights?

December 4 – Restrained Court v. Dynamic Court revisited.

December 6 – Conclusions from Supreme Court History.

Final Exam – Monday, December 16 – 8:00 am – 11:00 am

Course Summary:

Date

Details
