

**Information Sheet for LS 138:
Supreme Court and Public Policy**
Spring 2019
Professor Ben Brown

Office hours: Tuesday, Thursday 11:00 – 12:00, Room 212, Legal Studies Building, 2240
Piedmont.

e-mail - rbbrown@berkeley.edu

Grading:

Grades will be based on four factors:

Mid-Term Exam – 25%
Discussion Section assignments and participation - 15%
Analytical Essay – 20%
Final exam - 40%

The cases and other readings assigned on the syllabus are all available on my web-page:

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

Reference materials – Linda Greenhouse has written an accessible description of the Supreme Court – *The U.S Supreme Court: A Very Short Introduction*. 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>.

Syllabus for LS 138
Supreme Court and Public Policy
Spring 2019
Professor Ben Brown

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 January 21 – 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*, Chap. 1.

Jan. 21 – MLK Day.

Jan. 23 - Introduction to the Supreme Court and its role in U.S. government.

Jan. 25 - Brief history of the power of the Supreme Court to 1950; Constrained Court v. Dynamic Court debate.

Week of January 28 – 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.”

Jan. 28 – Supreme Court and Public Segregation - creation of Jim Crow.

Jan. 30 - NAACP attack on public segregation through the courts.

Feb. 1 - **Brown v. Board** - argument and decision.

Week of February 4 – **Brown v. Board: Decision, Implementation, Resistance**

Readings – Report on arguments in **D.C. v. Wesby**:
<http://www.scotusblog.com/2017/10/argument-analysis-justices-get-personal-probable-case-use-argument/>

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

Feb. 4 – Arguing before the Supreme Court. Guest Lecture TBD.

Feb. 6 – Establishing the meaning of **Brown v. Board** - Brown II and the Montgomery Bus Boycott.

Feb. 8 - Massive resistance.

Week of February 11 – Supreme Court Limits on Brown

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

Feb. 11 – Limiting **Brown v. Board** and Constitutionalizing White Flight.

Feb. 13 – Reversing **Brown v. Board** and conclusions from Public Segregation Battles.

Feb. 15 – Warren Court and Criminal Constitutional Rights.

Week of February 18 – Enforcing Rights (or not)

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

Feb. 18 – President’s Day – No Class

Feb. 20 – The attack on the Warren Court. Creating Loopholes – Search and Seizure.

Feb. 22 – Effective Right to Counsel, Problem of Bail.

Week of February 25 – Lessons from Criminal Constitutional Law

Readings – Michelle Alexander on the New Jim Crow – interview on Fresh Air; United States v. Whren; McCleskey v. Kemp; Tina Peng, “I’m a public defender...”

Feb. 25 – Politics and Mass Incarceration.

Feb. 27 – The New Jim Crow.

March 1 – Lessons from Criminal Constitutional Law.

Week of March 4 – Court and Vote Equalization

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

March 4 – Midterm Exam.

March 6 – VRA, One person, One vote.

March 8 – Gerrymandering in reaction to **Reynolds**. Voter ID laws and other voter suppression laws.

Week of March 11 – Voting Rights, conclusion; Reproductive Rights.

Readings – Davis v. Bandemer; Shelby County v. Holder; Sarah Weddington’s argument to Court in Roe; Roe v. Wade.

March 11 – Roberts Court attack on VRA and constitutionality of political gerrymandering. Pennsylvania Supreme Court Gerrymander decision.

March 13 – **Roe v. Wade** – background and argument.

March 15 – Role of lawyering and Blackmun’s opinion in **Roe**.

Week of March 18 – Political Attack on Roe and Court’s compromise

Readings – Planned Parenthood v. Casey (Casey on website); Gonzales v. Carhart.

March 18 – Political attacks on **Roe** and ERA; First cases interpreting **Roe**.

March 20 – Sandra Day O’Conner and “saving” **Roe** in **Casey**.

March 22 – State regulatory reaction to **Casey**; **Carhart**.

Week of March 25 - Have a great spring break!!!

Week of April 1 – Roe Rage and Gun Rights

Readings – Robert Post and Reva Siegel, “Roe Rage: Democratic Constitutionalism and Backlash.”

April 1 – Lessons from **Roe**.

Analytical Essay Assigned -April 1

April 3 – Gun Rights in early and mid-20th century; Black Panthers.

April 5 – NRA and Federalist Society – Originalism as a backlash against Warren Court.

Week of April 8 – Heller and its legacy

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

April 8 – Originalism and the 2nd Amendment.

April 10 – **Heller**, argument, decision and academic reaction.

April 12– Incorporating the 2nd Amendment and current gun policy

Week of April 15 – Gay Rights and Gay Marriage

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

April 15 – Gay rights in mid-20th century, AIDS epidemic.

April 17 – Ratifying sodomy laws, **Bowers** and **Romer**.

April 19 – Kennedy and **Lawrence** – case and reasoning.

Week of April 22 – The unlikely victory of Gay Marriage Rights.

Readings: **Perry v. Schwarzenegger**; **United States v. Windsor** (Windsor on website); **Obergefell v. Hodges**

Analytical Essay due – April 22

April 22 – Gay Marriage in the states, Defense of Marriage Act.

April 24 – California, Prop 8 and **Perry**.

April 26 – Gay marriage after **Perry**.

Week of April 23 – Lessons from History; How Effective is the Supreme Court in Influencing Public Policy?

Readings: Erwin Chemerinsky, “Thinking about the Supreme Court’s Successes and Failures.”

April 29 – Wedding Cakes and Religious Liberty – How protected are Gay Rights?

May 1 – Restrained Court v. Dynamic Court revisited.

May 3 – Conclusions from Supreme Court History.

Final Examination Wednesday, May 15 – 7:00 p.m. to 10:00 p.m.