

Information Sheet for LS 138
Supreme Court and Public Policy
Spring 2022

Professor Ben Brown

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Class Lectures: Monday, Wednesday, Friday 11:10–12:00 pm Pacific time

Zoom Office Hours: Fridays 9:00–10:00 am Pacific time

Office Hours Meeting ID: 983 2209 2035

Campus rules require that you sign into Zoom with your Cal ID.

Materials:

Linda Greenhouse, 2012, *The U.S Supreme Court: A Very Short Introduction* (required reading; you must purchase this book)

The cases and other readings assigned on the syllabus are all available on my website: <http://www.benbrownshistoryandlaw.com/> (Links to an external site.)

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/> ([Links to an external site.](#)).

To find complete copies of the edited cases that I have provided go to <http://www.findlaw.com> ([Links to an external site.](#)) 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> ([Links to an external site.](#)).

Grading:

Grades will be based on four factors:

Mid-Term Exam – 25%

Analytical Essay – 25%

Discussion Section assignments and participation – 10%

Final exam – 40%

Syllabus for LS 138
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Supreme Court cases, or excerpts from them, are bolded and underlined below. You are responsible for reading the cases as they are found on a separate tab on my website. They are arranged there alphabetically. Other materials are on the LS 138 tab and arranged in the order that we will address them.

Week of January 17 – Introduction to the Supreme Court

Readings:

Linda Greenhouse, *The U.S Supreme Court: A Very Short Introduction* (you must purchase and read this short book)

Orin S. Kerr, “How to Read a Judicial Opinion”

Alexander Hamilton, Federalist #78

“Brutus’s” 15th essay, The New-York Journal on March 20, 1788

Hollow Hope, Chapter 1

Classes:

January 17 – Martin Luther King, Jr. Day – NO CLASSES.

January 19 - Introduction to the Supreme Court and its role in U.S. Government.

January 21 - Brief history of the power of the Supreme Court to 1950; Constrained Court v. Dynamic Court debate.

Week of January 24 – Advocating for Racial Integration

Readings:

Argument analysis in *D.C. v. Wesby* by Amy Howe

Plessy v. Ferguson

Sweatt v. Painter

Classes:

January 24 – Supreme Court Advocacy: watch video of visiting lecturer Nat Garrett, partner at Jones Day (no live class)

January 26 – Supreme Court and public segregation - creation of Jim Crow.

January 28 - NAACP attack on public segregation through the courts.

Week of January 31 – *Brown v. Board of Education*; *Brown* Implementation

Readings:

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”

Michael Klarman, “Why Massive Resistance”

Cooper v. Aaron

Classes:

January 31 – Brown v. Board - argument and decision.

February 2 – Establishing the meaning of Brown v. Board - Brown II and the Montgomery bus boycott.

February 4 – Massive resistance

Week of February 7 – 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

Classes:

February 7 – Limiting Brown v. Board and constitutionalizing white flight.

February 9 – Reversing Brown v. Board and conclusions from public segregation battles.

February 11 – Warren Court and criminal constitutional rights.

Week of February 14 – Enforcing Rights (or not)

Readings:

Gideon v. Wainwright

Miranda v. Arizona

Terry v. Ohio

Sara Mayeux, “What Gideon Did”

Classes:

February 14 – Effective right to counsel, problem of bail.

February 16 – The attack on the Warren Court. Creating loopholes – search and seizure.

February 18 – Politics and Mass Incarceration

Week of February 21 – 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> (Links to an external site.)

Tina Peng, “I’m a public defender.”

United States v. Whren (identified as Whren on website)

McCleskey v. Kemp

Classes:

February 21 – President's Day – NO CLASSES.

February 23 – The New Jim Crow.

February 25 – Lessons from criminal constitutional law; Counter Majoritarian Dilemma.

Week of February 28 – Court and Vote Equalization

Readings:

Reynolds v. Sims

South Carolina v. Katzenbach

Classes:

February 28 – **Midterm Exam.**

March 2 – Voting Rights Act. One person, one vote.

March 4 – Gerrymandering in reaction to Reynolds. Voter ID laws and other voter suppression laws.

Week of March 7 – Voting Rights, Conclusion;

Reproductive Rights

Readings:

Davis v. Bandemer

Shelby County v. Holder

Rucho v. Common Cause

Sarah Weddington's argument to the Court in Roe

Roe v. Wade

Classes:

March 7 – Roberts Court attack on Voting Rights Act and constitutionality of political gerrymandering.

March 9 – Roe v. Wade – background and argument.

March 11 – Role of lawyering and Blackmun's opinion in Roe.

Week of March 14 – Political Attack on Roe and the Court's Compromise

Readings:

Planned Parenthood v. Casey (alphabetized as "Casey" on website)

Gonzales v. Carhart

Robert Post and Reva Siegel, "Roe Rage: Democratic Constitutionalism and Backlash"

Classes:

March 14 – Political attacks on Roe and the ERA; first cases interpreting Roe.

March 16 – Sandra Day O'Connor and “saving” Roe in Casey.

March 18 – State regulatory reaction to Casey. Carhart.

Week of March 21 - Have a great spring break!

Week of March 28 – Roe Rage and Gun Rights

Analytical Essay Assigned on March 28

Readings:

Listen to the first hour of the oral argument in *Dobbs v. Jackson's Women's Health*: <https://www.oyez.org/cases/2021/19-1392> ([Links to an external site.](#))

Review “Roe Rage” for your analytical essay.

Classes:

March 28 – Lessons from Roe.

March 30 – Gun rights in early and mid-twentieth century.

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

Week of April 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 and Originalism

Classes:

April 4 – Originalism and the Second Amendment.

April 6 – Heller: argument, decision and academic reaction.

April 8 – Incorporating the Second Amendment and current gun policy.

Week of April 11 – LGBTQ Rights

April 11 – Analytical Essay due

Readings:

Bowers v. Hardwick

Romer v. Evans

Lawrence v. Texas

Classes:

April 11 – LGBTQ rights in mid-twentieth century. AIDS epidemic.

April 13 – Ratifying sodomy laws, Bowers and Romer.

April 15 – Kennedy and Lawrence – case and reasoning.

Week of April 18 – The Unlikely Victory of Marriage Equality

Readings:

Defense of Marriage Act

Perry v. Schwarzenegger

Staged reading

of **Perry** transcript: <https://www.youtube.com/watch?v=qIUG8F9uVgM>



[\(Links to an external site.\)](#)

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

Classes:

April 18 – Kennedy and Lawrence – case and reasoning.

April 20 – Marriage equality in the states, Defense of Marriage Act.

April 22 – California Prop 8 and Perry.

**Week of April 25 – The Unlikely Victory of Marriage Equality continued;
How Effective is the Supreme Court in Influencing Public Policy?**

Readings:

Obergefell v. Hodges

Masterpiece Cakeshop v. Colorado Civil Rights Commission

Erwin Chemerinsky, “Thinking About the Supreme Court’s Successes and Failures”

Classes:

April 25 – Marriage equality after Perry.

April 27 – Judging the Supreme Court’s role in our society.

April 29 – Restrained Court v. Dynamic Court revisited.

Final Exam – Tuesday, May 10, 7:00 pm–10:00 pm