I. READ THIS SYLLABUS – I MEAN IT

Reading the syllabus is part of the assignment for the first class. In my experience, a lot of students don’t actually read the syllabus (even though I specifically assign it as reading) and then look inattentive in asking questions the syllabus covered. E.g.: “by when do we have to sign up on TWEN?” (see Part IV); “what can I pick as a response paper topic?” (see Part VI(A)). As lawyers, you will have to get used to reading, in advance, the rules of any court, judge, or private forum in which you have a case; consider this a set of such “local rules” you have to read in advance of your “legal work” in this course.

II. COURSE DESCRIPTION & SCOPE

This seminar addresses the history, current status, and proposed revisions of (1) "Equal Protection" rights under the Fourteenth Amendment and (2) "privacy" rights to personal autonomy (e.g., as to laws regulating abortion, contraception, and sexuality) under various constitutional amendments. Specific topics will include: analysis of the varied constitutional grounds for recognizing or rejecting abortion rights; limits on Congressional power to pass civil rights laws granting broader rights than the Fourteenth Amendment does; treatment of sexual orientation-related laws and government actions as "privacy" versus "equality" matters; and "benign"/"remedial" race- and sex-based government decisions such as affirmative action and same-sex schools.

III. CONTACTING ME

Email is the most reliable way to reach me promptly, but also feel free to call. I generally am in my office most weekdays, and you can stop by any time – but contacting me in advance is preferable to make sure I am available at your preferred time.

IV. TWEN – MANDATORY TO SIGN UP

By Friday, August 28th, you must sign up on the course’s TWEN page (on Westlaw) and, on the signup sheet for response papers, sign up to write response papers for two class dates (for more details on response papers, see Part VI(A)).

V. CLASS PARTICIPATION

Attending class, doing the reading, and being prepared to discuss it are essential for several reasons. First, this is a small class in which everyone is expected not only to master, but also to discuss, the material we cover. Second, the material is cumulative, so if you skip a subject, you may not understand later topics fully. Third, some topics are complex, and even the best teaching cannot easily make up for a lack of reading. If you have a reasonable excuse for being absent or unprepared, it probably is in your interest to tell me in advance over email so I know there is a reason other than disinterest and so I don’t call on you that day.

Budget your time well, because several of the class sessions have somewhat heavy, or at least dense, reading assignments – a burden counteracted by the several weeks during which no reading is assigned.

VI. ASSIGNMENTS

You will be assigned two kinds of writing this semester: (A) two short “response papers” and (B) one final paper. There also will be presentations based on your papers.
A. RESPONSE PAPERS

You will write, and submit into the TWEN drop box by 12 p.m. the day before the class for which it is assigned, a “response paper” (the paper rules are listed below in the footnote) on the reading for that class or something related. I want not a summary, but your thoughts, and the assignment is open-ended: argue for or against an assigned case; apply the reading to a real-world situation; respond to a question in the reading; compare a reading to something you learned elsewhere; or write on any related topic you like.

Why do I assign these? (1) They encourage creativity (even though you’re in law school). (2) They guarantee that one or two students give additional thought to each day’s reading. (3) They facilitate class participation for lower-key folks who find it easier to speak after having already given the topic some thought (so when you do a response paper, don’t be surprised if you are called to discuss what you wrote).

B. FINAL PAPER

You will be assigned to write a final paper of roughly 20 to 25 pages analyzing a particular legal issue we are covering. The assigned readings will provide a starting point for your research. You should submit final papers (and drafts) into the TWEN drop box by the deadlines listed on the below week-by-week course schedule. More details on final paper topics will be forthcoming during the semester.

C. PRESENTATIONS

After you draft your final papers, we will have classes in which you present your paper and field questions. More details on final paper presentations will be forthcoming during the semester.

D. NOTE: I GRADE FOR “WRITING”

In reading your response papers, your draft final paper, and your finalized final paper, I grade grammar and style, not just “content” – because even the most brilliant content gets obscured by sloppy writing. Most of you will do more writing than speaking in summer jobs and as new lawyers, so you have to learn to write, as well as read and speak, about the law you are learning. I see attorneys waste hard work and intelligent thought by turning in sloppy papers to supervisors or even courts – papers with errors so basic that they could result only from a lack of proofreading. You should practice avoiding such errors by engaging in the sort of meticulous self-proofreading too few lawyers undertake. I assign response papers in almost every course I teach; there always are some students who do not read or believe this paragraph, and their grades suffer as a result.

VII. GRADING

A. FINAL PAPER

Your presumptive course grade will be calculated as follows: 20% your grade on your draft final paper and 80% your grade on your finalized final paper, subject to adjustment (as explained below) based on your response papers, class participation, and presentation.

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1 In the rare event of a multiple-location internet problem (e.g., at home and CU simultaneously): (A) leave a hard copy for me, (B) with a note explaining that you had an internet problem, and (C) as soon as the internet problem ends, submit your paper into the drop box and email me when you have done so.

2 Rules and guidelines for response papers:

(1) Submit the paper as a Microsoft Word, RTF, or PDF file (email me in advance if you cannot).
(2) Have the document filename include your first initial and last name.
(3) Write your papers in 12-point Times New Roman font, with 1” margins, and double-spaced.
(4) Aim for 3-4 pages, but content and quality are what matter, so length is not critical. Do not assume three pages are better than two and a half, and you can go over four pages if you have more to say.
B. Response Papers: Grading and Lateness/Make-Up Policy

Response papers receive one of three grades: check(√), check-plus(√+), or check-minus(√-). Most papers get a check. This grade will factor into your plus/minus factor (see below).

If you do not turn in a paper on time (i.e., noon the day before the relevant class session), you can either (a) turn it in by 10 p.m. the night before the class (i.e., up to 10 hours late) or, if you cannot do that, then (b) do a “make-up” response paper for a later class, ideally one that still has an open spot on the TWEN signup page. Any late or make-up paper will be graded down a notch (from √+ to √, from √ to √-, or from √- to two √- grades), both on general principle (deadlines are hugely important for lawyers) and because lateness defeats the purpose of response papers—that you give extra thought to your assigned reading, and that I get to read papers enough in advance to consider incorporating a point you make into my class preparation.

The response papers are mandatory for completion of the course. If you do not do your paper, and do not make it up later, you will not be allowed to take the final; you will fail the class, just as a lawyer can lose a case by not making a required court submission or not drafting a necessary document for a client.

C. Plus/Minus Factor

Your grade may rise or fall up to three points based on class participation and your response papers. That is, if your grade from your draft and final paper is 85, your presumptive course grade is 85, but (1) it could drop as low as 82 due to a combination of poor attendance, participation, and/or preparation, and (2) it could rise as high as 88 if you do especially well in those regards. Application of the plus/minus factor is the exception, not the rule; neither frequent participation nor good response papers guarantees a grade boost, so do not assume that the lack of a plus factor means I disliked your class participation.

D. Serious Attendance Problems

While attendance ordinarily affects only your plus/minus factor, our class discussions are critical to learning this subject, so a serious, ongoing lack of attendance will have more significant consequences, like a further grade decrease (i.e., beyond a three-point minus factor) or, in extreme cases, a failing grade. Absent special circumstances, you will receive notice and an opportunity to remedy the situation (e.g., an email urging you to attend class) before any consequences beyond a three-point minus factor.

VIII. Course Materials

  * note: this is Chemerinsky’s Constitutional Law treatise, not his Constitutional Law casebook

  * note: this is just the supplement to Chemerinsky’s Constitutional Law casebook, not the casebook


• various handouts (cases, articles, etc.); note that some of the items I will post (rather than have you find) may be abridged excerpts, so you should not just get unabridged versions from Westlaw/Lexis

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3 If you are signed up to do a response paper for the last class with new reading, and you fail to do that paper, you will have to discuss with me how you could do a later make-up paper.
IX. **Weekly Assignments**

**Week 1 (8/26):** Equal Protection – Race  
- Ch. 694-701, 710-744  
- Supp. 157-164 (Johnson v. California, 2005)  

**Week 2 (9/2):** Equal Protection – Race – Rethinking Brown  
- Ch. 701-709  
- Balkin, *Brown* book – read the following excerpts *in the following order:*  
  1. Chapters 1 & 2 of Part I  
  2. Appendix A  
  3. Read 5 of the opinions – McConnell’s, Bell’s, and any 3 others

**Week 3 (9/9):** Equal Protection – Gender  
- Ch. 749-766  
- Handout: Sara Mandelbaum, “As VMI Goes . . .”: The Domino Effect And Other Stubborn Myths, 6 SETON HALL CONST. L.J. 979 (1996)

**Week 4 (9/16):** Substantive Due Process – Economic Rights  
- Ch. 605-628  
- Supp. 135-140 (Philip Morris USA v. Williams, 2007)  

**Week 5 (9/23):** Substantive Due Process – Privacy – Various Family & Reproductive Rights  
- Ch. 792-802, 806-841  
- Supp. 185-201 (Gonzales v. Carhart, 2007)

**Week 6 (9/30):** Substantive Due Process – Privacy – Rethinking Roe  
- Balkin, *Brown* book – read Part I and then the following opinions: Balkin’s, Siegel’s, Rubenfeld’s, Sunstein’s, Amar’s, Collett’s, and Paulsen’s

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5 “Supp.” is Chemerinsky’s 2008 Supplement (which has several assigned 2005-08 cases) to his Constitutional Law casebook.
Week 7 (10/7): Sexual Orientation – Equal Protection, Substantive Due Process, Both, or Neither?
• Ch. 677-689, 782-789
• Handout: Romer v Evans (1996)
• Handouts: Any two of the following four articles:

Week 8 (10/14): Equal Protection – Rethinking “Tiers” of Scrutiny
• Ch. 766-777
• Handouts: Any two of the below articles (or just the longer Gaffney article):
  - Stephen E. Gottlieb, Tears for Tiers on the Rehnquist Court, 4 U. PA. J. CONST. L. 350-371 (22) (read this one only if you like or understand philosophy)
  - Leslie Friedman Goldstein, Between the Tiers: The New[est] Equal Protection and Bush v. Gore, 4 U. PA. J. CONST. L. 372-393 (22)

Week 9 (10/21): Eleventh Amendment Immunity from Fourteenth Amendment Legislation
• Ch. 180-199, 218-231
• Handout: Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001)
• Supp. 67-70 (U.S. v. Georgia & preceding material)

Week 10: DRAFT PAPER DUE 11:59 pm Wed 10/28 in TWEN drop box (no class session this week)
*** Sign up for your writing conference time on TWEN after submitting your paper ***

Week 11: Individual Writing Conferences (spread throughout the week; in lieu of class session)

Week 12 (11/11): In-Class Paper Presentations & Discussions

Week 13 (11/18): In-Class Paper Presentations & Discussions (this is the last class session)

Week 14-15: FINAL PAPER DUE 11:59 pm Monday 12/7 in TWEN drop box (no class session)