
TABLE OF CONTENTS

PREFACE.....	V
TABLE OF CASES.....	XXVII
The Constitution of the United States	1
PART 1. STRUCTURE AND POWERS OF THE NATIONAL GOVERNMENT	
Chapter 1. Introduction to the Constitution.....	17
<i>[Assignment 1].....</i>	17
I. Before the Constitution	17
English and American Constitutionalism	18
American Antecedents to the Constitution	19
The Convention and Ratification	23
The Federalist No. 1	25
The Federalist No. 40	26
The Federalist No. 43	28
Notes	29
Ratification and the Bill of Rights	30
<i>[Assignment 2].....</i>	30
II. The Constitution	30
The Federalist No. 39	31
Constitutional Themes	33
The Dead-Hand Problem	38
Types of Constitutional Argument	38
A Map of the Constitution	40
Chapter 2. The Separation of the National Powers.....	43
<i>[Assignment 3].....</i>	43
An Introduction to the Separation of Powers	43
Youngstown Sheet & Tube Co. v. Sawyer.....	44
Notes.....	59
<i>[Assignment 4].....</i>	60
I. Article I: The Legislative Power	60
A Map of Article I.....	60
A. Delegation of Legislative Power: “Shall Be Vested in a Congress of the United States”	62
The Post Roads Debate	62
Notes	68
The Non-Delegation Doctrine’s “One Good Year”	68
Gundy v. United States	69
Notes	80
<i>[Assignment 5].....</i>	81
B. The Composition of Congress: “The House of Representatives . . . and the Senate of the United States shall be composed . . . ”	81
Powell v. McCormack.....	82
Notes	88

U.S. Term Limits, Inc. v. Thornton	89
Notes	103
C. Legislative Procedure: “Each House may determine the Rules of its Proceedings”	104
The Illustration of the Filibuster	104
Notes	105
[Assignment 6]	106
D. Bicameralism and Presentment: “Every Bill which shall have passed the House of Representatives and the Senate, shall . . . be presented to the President”	106
INS v. Chadha	107
Notes	118
Clinton v. City of New York	119
Notes	128
[Assignment 7]	128
E. The Power of the Purse: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law”	128
United States v. Lovett	129
Barack Obama, Statement on H.R. 1473	136
Notes	138
U.S. House of Representatives v. Burwell	138
Notes	145
[Assignment 8]	146
F. Legislative Investigations	146
McGrain v. Daugherty	146
Notes	150
Trump v. Mazars, USA, LLP	151
Notes	162
[Assignment 9]	163
II. Article II: The Executive Power	163
A Map of Article II	165
The Federalist No. 70	166
A. The Appointment Power: “he . . . shall appoint”	170
The Federalist No. 76	170
Note	172
Buckley v. Valeo	173
Notes	176
B. Recess Appointments	177
National Labor Relations Board v. Noel Canning	177
Notes	193
[Assignments 10–11]	193
C. Supervising the Executive Branch: “in a President . . .”	193
Foundations of the Removal Power: The Decision of 1789	194
The Supreme Court and the Removal Power: Doctrinal History	196
Myers v. United States	197
Humphrey’s Executor v. United States	209
Morrison v. Olson	212
Notes	226
The Supreme Court and the Removal Power: The Latest Word	228

Seila Law, L.L.C. v. Consumer Financial Protection Bureau.....	228
Notes.....	242
The Power to Direct Subordinates	242
William Wirt, Opinion on the Accounting Officers	243
Roger Taney, Opinion on the Jewels of the Princess of Orange	245
Notes	247
<i>[Assignment 12]</i>	248
D. Suspending and Dispensing Powers?: “he shall take Care that the Laws be faithfully executed”	248
United States v. Cox	249
Notes	256
Adams v. Richardson	256
Notes	258
Karl R. Thompson, The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others	259
Notes	265
<i>[Assignment 13]</i>	267
E. Foreign Affairs: “he shall receive Ambassadors”	267
The Neutrality Controversy	268
George Washington, The Proclamation of Neutrality	269
Pacificus, No. 1	270
Helvidius, Nos. 1 & 2	275
Notes	279
The Neutrality Act of 1794	280
Modern Doctrine	281
Zivotofsky v. Kerry	281
Notes	298
A Note on Executive Agreements	299
A Note on the Iranian Nuclear Agreement	300
<i>[Assignment 14]</i>	300
F. War: “Congress shall have power . . . To Declare War” but “The President shall be Commander in Chief”	300
Starting War.....	300
Text	301
Historical Context.....	302
James Madison’s Notes from the Constitutional Convention: “To Make War”	302
Notes	303
Practice and Precedent	304
The Brig Amy Warwick (The Prize Cases)	305
Notes	311
Declaration of War Against Japan.....	313
The Gulf of Tonkin Resolution	313
Notes	313
The War Powers Resolution of 1973	315
Richard Nixon, Statement Vetoing the War Powers Resolution	317
Notes	319
Authorization for Use of Military Force	320

Notes	321
The War Powers Debate Continues: Syria and Soleimani	322
Terminating War	324
[Assignment 15]	325
Conducting War	325
Abraham Lincoln, The Preliminary Emancipation Proclamation	325
Abraham Lincoln, The Final Emancipation Proclamation	326
Notes	327
Abraham Lincoln, Order of Retaliation	327
Notes	328
Korematsu v. United States	328
Notes	339
Hamdi v. Rumsfeld	342
Notes	349
[Assignment 16]	349
G. Impeachment: “The President . . . shall be removed from Office on Impeachment . . . and Conviction”	349
David Currie on the Impeachment of Andrew Johnson	350
Notes	356
Law Professors’ Letter on the Clinton Impeachment	356
Henry Hyde, Statement on Impeachment of President Clinton	358
Notes	360
House Report on the Impeachment of Donald Trump	361
Trial Memorandum of President Trump	363
Notes	366
Stephen I. Vladeck, Why Trump Can Be Convicted Even as an Ex-President	366
Michael Ramsey, A Textualist/Originalist Case Against the Power to Impeach and Try Former Presidents	368
Notes	370
[Assignment 17]	370
III. Article III: The Judicial Power	370
A Map of Article III	371
A. Judicial Review	375
Brutus, No. 11	376
The Federalist No. 78	378
Background to <i>Marbury</i>	380
<i>Marbury v. Madison</i>	382
Notes	393
<i>Stuart v. Laird</i>	395
Notes	395
[Assignment 18]	396
B. Departmentalism and Judicial Supremacy	396
1858: <i>Lincoln v. Douglas</i>	396
Abraham Lincoln, Speech at Springfield, Illinois	397
Stephen Douglas, Speech at the Third Lincoln-Douglas Debate	398
Abraham Lincoln, Speech at the Sixth Lincoln-Douglas Debate	398
Stephen Douglas, Speech at the Sixth Lincoln-Douglas Debate	399
Notes	400

1958: <i>Cooper v. Aaron</i>	401
<i>Cooper v. Aaron</i>	402
Notes	405
<i>Ex parte Merryman</i> and Specific Judgments	405
<i>Ex parte Merryman</i>	406
Edward Bates, Opinion on the Suspension of the Privilege of the Writ of Habeas Corpus.....	408
Notes	412
<i>[Assignment 19]</i>	415
C. Adjudication of Genuine Disputes: “Cases [and] Controversies”	415
The Correspondence of the Justices	415
Thomas Jefferson, Letter to the Justices of the Supreme Court	416
The Letter of the Supreme Court Justices to President Washington.....	416
Notes	417
Alexis de Tocqueville on the American Judiciary	417
<i>Ex parte Levitt</i>	420
Notes	421
<i>Massachusetts v. Mellon; Frothingham v. Mellon</i>	422
Notes	425
Standing, Mootness, and Ripe ness	426
<i>[Assignment 20]</i>	428
D. The Political Question Doctrine	428
<i>Luther v. Borden</i>	428
Notes	435
(Walter) Nixon v. United States.....	435
Notes	444
<i>[Assignment 21]</i>	445
E. The Eleventh Amendment and Sovereign Immunity: “The Judicial power . . . shall not . . . extend to”	445
<i>Chisholm v. Georgia</i>	447
Notes	456
Chapter 3. Federalism.....	461
<i>[Assignment 22]</i>	461
A Map of the Constitution’s Federalism Provisions	461
The Political Theory of American Federalism	462
The Federalist No. 10	462
Notes	467
I. Article I, Sections 8 and 10: Federalism and National Powers	468
A. Introduction to the Scope of National Powers: The Bank of the United States.....	468
The First Bank of the United States	468
James Madison, Speech on the Bank Bill	470
Thomas Jefferson, Opinion on the Bank Bill	476
Alexander Hamilton, Opinion on the Bank Bill.....	478
<i>[Assignment 23]</i>	484
The Second Bank of the United States	484
<i>McCulloch v. Maryland</i>	486

Notes	501
After <i>McCulloch</i>	502
James Madison, Letter to Lafayette	503
Andrew Jackson, Veto Message on the Bank	504
The Death of the Second Bank	506
The Bank and Constitutional Interpretation	507
<i>[Assignment 24]</i>	508
B. The Power to Regulate Commerce Among the Several States	508
<i>Gibbons v. Ogden</i>	509
Notes	514
The Commerce and Necessary and Proper Clauses: After <i>Gibbons v. Ogden</i>	515
<i>Hammer v. Dagenhart</i>	519
Notes	523
The Commerce and Necessary and Proper Clauses: After <i>Hammer v. Dagenhart</i>	523
<i>United States v. Darby</i>	525
Notes	528
<i>[Assignment 25]</i>	528
The Modern Debate	528
<i>Wickard v. Filburn</i>	528
Notes	532
<i>Heart of Atlanta Motel v. United States</i>	532
Notes	536
<i>United States v. Lopez</i>	536
Notes	549
<i>[Assignment 26]</i>	550
In Closer Focus: The Commerce and Necessary and Proper Clauses	550
<i>Gonzales v. Raich</i>	550
Notes	561
<i>United States v. Comstock</i>	561
Notes	570
<i>[Assignment 27]</i>	571
In Closer Focus: The Necessary and Proper Clause and State Sovereignty	571
<i>Garcia v. San Antonio Metropolitan Transit Authority</i>	571
Notes	581
<i>Printz, Sheriff/Coroner, Ravalli County, Montana v. United States</i>	582
Notes	594
<i>[Assignment 28]</i>	596
C. The Power to Tax	596
Express Limits on the Power to Tax	597
<i>Hylton v. United States</i>	598
Notes	601
Implied Limits on the Power to Tax?	604
<i>[Assignment 29]</i>	609
D. The Power to Spend	609
The Spending Power	609

The Assumption Controversy	610
Two Views of the Spending Power: Madison and Hamilton	612
James Madison, Veto Message on the Bonus Bill.....	612
Alexander Hamilton, Report on Manufactures.....	613
Notes	613
The Savannah Fire Debate	614
Notes	618
Spending Litigation During the New Deal.....	619
South Dakota v. Dole	621
Notes	628
<i>[Assignments 30–31]</i>	629
E. Synthesis: The Commerce, Taxing, Spending, and Necessary and Proper Powers	629
National Federation of Independent Business v. Sebelius	629
Notes	656
<i>[Assignment 32]</i>	660
F. Other National Powers?	660
Legal Tender	660
Knox v. Lee	664
Notes	672
Expulsion of Aliens	673
Fong Yue Ting v. United States.....	674
Notes	679
<i>[Assignment 33]</i>	680
G. The Treaty Power.....	680
Missouri v. Holland.....	681
Reid v. Covert.....	682
Notes	684
Medellín v. Texas	685
Notes	692
<i>[Assignment 34]</i>	693
II. Article IV: Federalism and the Relationship of the States to Each Other and to the Nation	693
A Map of Article IV	693
A. Prelude: Slavery in the Constitution	696
The Quaker Anti-Slavery Petitions of 1790	699
The Petition of the Quakers of Pennsylvania, New Jersey, and Other States	699
The Petition of the Pennsylvania Society for Promoting the Abolition of Slavery	700
Slave Trade Debates	701
Slave Trade Debates: Report of the Special Committee.....	707
Slave Trade Debates: Report of the Committee of the Whole House ...	708
Notes	709
<i>[Assignment 35]</i>	709
B. The Full Faith and Credit Clause.....	709
C. The Privileges and Immunities Clause	711
Corfield v. Coryell	711
Notes	714

D.	The Fugitive Slave and Fugitive Extradition Clauses	716
	<i>Prigg v. Pennsylvania</i>	716
	Notes	724
	<i>[Assignments 36–37]</i>	725
E.	The Territories Clause, the New States Admission Clause, and Citizenship	725
	<i>Dred Scott v. Sandford</i>	728
	Notes	751
	In Closer Focus: Interstate Recognition of Slavery	754
	<i>Lemmon v. The People</i>	754
	Notes	760
	<i>[Assignment 38]</i>	760
F.	The Guarantee Clause: Secession and Representation	760
	Secession	761
	<i>James Buchanan, Address to Congress</i>	761
	Notes	764
	<i>Abraham Lincoln, First Inaugural Address</i>	764
	Notes	770
	<i>Texas v. White</i>	775
	Notes	779
	<i>[Assignment 39]</i>	780
	Representation and Republicanism	780
	<i>Baker v. Carr</i>	783
	Notes	787
	<i>Reynolds v. Sims</i>	787
	Notes	789
	<i>Rucho v. Common Cause</i>	793
	Notes	800
	Institutional Responses to Gerrymandering	801
Chapter 4. The Amendment Process		805
	<i>[Assignment 40]</i>	805
I.	A Perfect Problem	805
	<i>Dillon v. Gloss</i>	806
	Congressional Pay Amendment	808
	Notes	812
	A Note on the Equal Rights Amendment	813
PART 2. RIGHTS AGAINST THE GOVERNMENT		
Chapter 5. The Bill of Rights		819
	<i>[Assignment 41]</i>	819
	A Short History of the Bill of Rights	819
	<i>Herbert Storing, What the Anti-Federalists Were For</i>	820
	Note	822
	<i>James Madison, Speech Introducing Amendments to the U.S. Constitution</i>	822
	Notes	830
	Did the Bill of Rights Bind the States?	831
	<i>Barron v. Baltimore</i>	831

Note	834
<i>[Assignment 42]</i>	836
I. The First Amendment and Freedom of Speech	836
A. Historical Introduction to the First Amendment.....	836
William Blackstone on the Liberty of the Press	839
Cato's Letter No. 15, "Of Freedom of Speech: That the same is inseparable from publick Liberty"	840
Cato's Letter No. 38, "The Right and Capacity of the People to Judge of Government".....	841
Notes	843
Demands for First Amendment Protections	843
James Madison's Initial Proposal for the Freedoms of Speech, Press, Assembly, and Petition	844
Debate on Speech, Press, Assembly, and Petition	844
House Draft Transmitted to the Senate	846
Why Free Speech?	846
John Stuart Mill, "Of the Liberty of Thought and Discussion"	846
Notes	850
<i>[Assignment 43]</i>	851
B. Early Controversies and Interpretation	851
The Democratic-Republican Clubs Controversy	851
George Washington, Letter to Burgess Ball.....	852
Debate on Self-Created Societies	853
The Alien and Sedition Acts	855
The Sedition Act	856
Notes	857
Judicial Enforcement of the Sedition Act.....	857
Lyon's Case.....	857
Notes	859
The Virginia and Kentucky Resolutions	860
Thomas Jefferson, Draft of the Kentucky Resolutions.....	861
Rhode Island's Answer to the Virginia Resolutions	863
The Minority Report to the Virginia Resolutions	864
James Madison, Report of 1800	867
Notes	872
The Election of 1800 and President Jefferson's Pardons	873
Note.....	874
<i>[Assignment 44]</i>	874
C. Freedom of the Press	874
New York Times Co. v. Sullivan	874
Notes	882
Branzburg v. Hayes	884
Notes	889
<i>[Assignment 45]</i>	891
D. The Rise and Fall of Categorical Exceptions.....	891
Chaplinsky v. New Hampshire	891
Notes	893
Categorical Content-Based Exclusions from First Amendment Protection.....	895

Vagueness and Overbreadth in Free Speech Cases	897
Brown v. Entertainment Merchants Association	899
Notes	910
[Assignment 46]	911
E. Content-Based and Content-Neutral Restrictions	911
Reed v. Town of Gilbert, Arizona	912
Notes	921
Reasonable, Neutral Time, Place, and Manner Regulations	921
McCullen v. Coakley	923
Notes	928
[Assignment 47]	929
United States v. O'Brien	929
Notes	935
Texas v. Johnson	935
Notes	944
[Assignment 48]	945
F. Offensive and Degrading Speech	945
Cohen v. California	945
Notes	950
Snyder v. Phelps	951
Notes	959
[Assignment 49]	960
G. Incitement, Subversive Advocacy, and Threats	960
A Historical Introduction to Incitement, Subversive Advocacy, and Speech Urging Violation of the Law	960
Brandenburg v. Ohio	969
Notes	971
R.A.V. v. City of St. Paul	973
Notes	976
Nazis in Skokie	980
[Assignment 50]	982
H. Protests and Demonstrations	982
Thomas v. Chicago Park District	982
Notes	986
NAACP v. Claiborne Hardware Co.	987
Notes	993
A Note on Abortion Clinic Protests	993
[Assignment 51]	999
I. Free (?) Speech in Schools and Universities	999
Tinker v. Des Moines Independent Community School District	1000
Notes	1003
High School Speech Cases After <i>Tinker</i>	1004
Dariano v. Morgan Hill Unified School District	1007
Note	1011
John Doe v. University of Michigan	1012
Notes	1016
Meriwether v. Hartop	1017
Notes	1022

<i>[Assignment 52]</i>	1022
J. Campaign Finance	1022
Buckley v. Valeo	1022
Notes	1028
Nixon v. Shrink Missouri Government PAC	1029
Citizens United v. Federal Election Commission	1033
Notes	1051
<i>[Assignment 53]</i>	1053
K. Public Forum Doctrine	1053
Commonwealth v. Davis	1053
Hague v. CIO	1054
Notes	1056
Perry Education Association v. Perry Local Educators Association	1056
Notes	1063
Rosenberger v. Rector and Visitors of University of Virginia	1063
Notes	1071
<i>[Assignment 54]</i>	1071
L. Freedom of the Press and the Internet	1071
Miami Herald Publishing Co. v. Tornillo	1072
Red Lion Broadcasting Co. v. Federal Communications Commission	1077
Notes	1081
NetChoice, LLC v. Attorney General, State of Florida	1082
Biden v. Knight First Amendment Institute	1088
Notes	1091
United States v. Alvarez	1092
Notes	1100
<i>[Assignment 55]</i>	1102
M. Compelled Speech	1102
West Virginia State Board of Education v. Barnette	1102
Notes	1108
National Institute of Family and Life Advocates v. Becerra	1108
Notes	1117
Janus v. American Federation of State, County, and Municipal Employees, Council 31	1118
Notes	1127
<i>[Assignment 56]</i>	1128
The Right of Groups to Control Their Own Expressive Messages	1128
Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston	1129
Notes	1133
Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission....	1134
Notes	1143
<i>[Assignment 57]</i>	1144
N. Collective Expression: Groups and the Freedom of “Expressive Association”	1144
Democratic Party of United States v. Wisconsin	1145
Notes	1147

Roberts v. United States Jaycees.....	1147
Boy Scouts of America v. Dale.....	1153
Notes	1157
A Note on <i>Christian Legal Society v. Martinez</i>	1158
[Assignment 58]	1159
II. The First Amendment and Freedom of Religion	1159
A. Background and Drafting History	1159
Patrick Henry, A Bill Establishing a Provision for Teachers of the Christian Religion	1160
James Madison, Memorial and Remonstrance Against Religious Assessments	1161
Notes	1162
James Madison's Initial Proposal for the Religion Clauses	1162
Debate on Establishment of Religion and Rights of Conscience	1163
House Draft Transmitted to the Senate	1165
Senate Motions.....	1165
Notes	1166
B. The Free Exercise Clause	1167
Stansbury v. Marks	1167
Notes	1168
Wisconsin v. Yoder	1169
Employment Division v. Smith	1172
Notes	1181
[Assignment 59]	1183
Free Exercise After <i>Smith</i>	1183
A Note on the Church Covid-Restriction Cases	1186
Burwell v. Hobby Lobby Stores, Inc.	1188
Notes	1197
[Assignment 60]	1199
C. The Establishment Clause	1199
Notes	1200
Government Schools and Other Government-Controlled Messages	1203
Engel v. Vitale	1203
Notes	1206
Town of Greece v. Galloway	1208
Notes	1213
American Legion v. American Humanist Association	1214
Notes	1220
[Assignment 61]	1222
D. Accommodation of Religion: The Intersection of Free Exercise and Non-Establishment	1222
Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos	1222
Notes	1228
Cutter v. Wilkinson.....	1230
Notes	1232
Financial Aid to Religious Activities	1233
Everson v. Board of Education.....	1233

Notes	1239
[Assignment 62]	1240
Lemon v. Kurtzman	1240
Notes	1246
Cases After <i>Lemon</i>	1246
Zelman v. Simmons-Harris	1249
Notes	1257
A Note on the Transition from Permissible to Mandatory Neutrality: <i>Locke v. Davey</i>	1258
Trinity Lutheran Church of Columbia, Inc. v. Comer	1259
Notes	1269
<i>Carson v. Makin</i>	1270
Notes	1280
[Assignment 63]	1281
III. The Second and Third Amendments.....	1281
District of Columbia v. Heller	1283
Notes	1294
<i>New York State Rifle & Pistol Association v. Bruen</i>	1294
Notes	1308
[Assignment 64]	1309
IV. Criminal and Civil Proceedings: The Fourth, Fifth, Sixth, Seventh, and Eighth Amendments.....	1309
The Fourth Amendment	1309
<i>Kyllo v. United States</i>	1310
Notes	1316
The Fifth Amendment	1317
<i>Miranda v. Arizona</i>	1318
Notes	1326
A Note on Other Fifth Amendment Rights	1328
The Sixth Amendment.....	1329
A Note on Other Sixth Amendment Rights	1331
The Seventh Amendment.....	1331
The Eighth Amendment	1332
[Assignment 65]	1335
V. The Takings Clause	1335
What Is a “Taking” of Property for a Public Use?	1335
<i>Nollan v. California Coastal Commission</i>	1336
Note.....	1339
What Is a Taking of “Property” for a Public Use?	1339
What Is a Taking of Property for a “Public Use”?	1340
<i>Kelo v. New London</i>	1340
Notes	1347
VI. The Ninth and Tenth Amendments	1348
The Ninth Amendment.....	1348
The Tenth Amendment	1351

Chapter 6. The Reconstruction Amendments.....	1353
<i>[Assignment 66]</i>	1353
I. Foundations of the Thirteenth and Fourteenth Amendments	1353
A. Slavery, Natural Law, and the Antebellum Constitution	1354
Somerset v. Stewart.....	1354
Notes.....	1355
The Northwest Ordinance, Article VI.....	1357
Notes.....	1357
Alexander Stephens, “African Slavery: The Corner-Stone of the Southern Confederacy”	1357
Notes.....	1359
Frederick Douglass, “The American Constitution and the Slave”.....	1359
Notes.....	1363
William Lloyd Garrison, “The American Union”	1364
Notes.....	1365
Dred Scott v. Sandford.....	1365
Notes.....	1367
B. The Thirteenth Amendment	1368
<i>[Assignment 67]</i>	1368
C. The Fourteenth Amendment.....	1368
The Congressional Response	1368
The Civil Rights Act of 1866.....	1369
Andrew Johnson, Statement Vetoing the Civil Rights Act of 1866	1369
William Lawrence, Speech on the Civil Rights Act of 1866	1371
Notes	1374
A Bill to Declare and Protect All the Privileges and Immunities of Citizens of the United States in the Several States	1375
Notes	1376
Drafting a New Amendment	1376
The Text.....	1377
Debate and Ratification.....	1382
Thaddeus Stevens, Speech Presenting the Proposed Amendment in the U.S. House.....	1383
Jacob Howard, Presenting the Proposed Amendment to the U.S. Senate	1384
Schuyler Colfax on the Proposed Amendment.....	1386
Benjamin Butler on the Proposed Amendment	1387
Notes	1389
<i>[Assignment 68]</i>	1391
D. The Early Cases	1391
Slaughter-House Cases.....	1391
Notes	1407
Strauder v. West Virginia	1410
Notes	1414
<i>[Assignment 69]</i>	1416
The Civil Rights Cases	1417
Notes	1428
Yick Wo v. Hopkins.....	1429
Notes	1433

<i>[Assignment 70]</i>	1434
II. The Citizen, the State, and the Fourteenth Amendment	1434
A. The Citizenship Clause.....	1434
Afroyim v. Rusk.....	1434
Notes	1439
B. “No State Shall”: The State-Action Requirement	1440
Shelley v. Kraemer.....	1440
Note.....	1446
Prager University v. Google LLC	1446
Note.....	1450
<i>[Assignment 71]</i>	1451
III. “Equal Protection of the Laws”	1451
A. The Segregation Cases	1451
Railroad Company v. Brown	1451
Plessy v. Ferguson	1453
Notes	1459
Cumming v. Board of Education.....	1461
Notes	1464
Berea College v. Kentucky	1464
Notes	1469
<i>[Assignment 72]</i>	1471
B. The Desegregation Cases	1471
Brown v. Board of Education (Brown I)	1472
Notes	1476
Bolling v. Sharpe.....	1482
Note.....	1483
<i>[Assignment 73]</i>	1485
Brown v. Board of Education (Brown II)	1485
Notes	1486
A Note on <i>Browder v. Gayle</i>	1489
Loving v. Virginia	1491
Notes	1495
A Note on Busing	1497
C. Discriminatory Intent and Disparate Impact	1498
Washington v. Davis.....	1498
Notes	1501
<i>[Assignment 74]</i>	1503
D. Affirmative Action.....	1503
The History of Affirmative Action	1504
Affirmative Action in Education: An Introductory Hypothetical (<i>Taxman v. Piscataway</i>).....	1506
Regents of the University of California v. Bakke	1507
Notes	1523
<i>[Assignment 75]</i>	1526
Affirmative Action in Government Contracts and Licenses	1526
Adarand Constructors, Inc. v. Pena.....	1527
Notes	1542

[Assignments 76–77]	1543
E. Sex Discrimination	1543
The Nineteenth Century	1543
Bradwell v. Illinois	1544
Minor v. Happersett	1546
Notes	1550
The Twentieth Century	1552
Craig v. Boren	1554
Notes	1561
United States v. Virginia	1563
Notes	1572
[Assignment 78]	1575
F. Race, Sex, and . . . What Else? Other Classifications Under the Equal Protection Clause	1575
The General Rule of “Rational Basis”	1576
Heightened Scrutiny?	1577
Buck v. Bell	1577
Notes	1579
Kotch v. Board of River Port Pilot Commissioners for Port of New Orleans	1580
A Note on <i>City of Cleburne</i>	1585
Other Suspect Classifications?	1585
The “Fundamental Interests” Strand of Equal Protection Doctrine	1587
[Assignment 79]	1589
IV. “Due Process of Law”	1589
A. Due Process and Separation of Powers	1590
St. George Tucker on Due Process	1592
Joseph Story on Due Process	1592
Murray’s Lessee v. Hoboken Land & Improvement Co.	1593
Notes	1595
Calder v. Bull	1596
Notes	1602
Mathews v. Eldridge	1603
Notes	1609
[Assignment 80]	1610
B. Incorporation	1610
Hurtado v. California	1611
Notes	1617
McDonald v. City of Chicago	1618
Notes	1632
[Assignment 81]	1632
C. The Rise of Substantive Due Process	1632
Lochner v. New York	1634
Notes	1641
Meyer v. Nebraska	1643
Pierce v. Society of Sisters	1647
Notes	1648

[Assignment 82]	1649
D. The Fall and Rising Again of Substantive Due Process	1649
Franklin Delano Roosevelt, Fireside Chat on the Reorganization of the Judiciary	1650
A Note on <i>West Coast Hotel</i> and the Interring of <i>Lochner</i>	1653
<i>Griswold v. Connecticut</i>	1657
Notes	1671
[Assignment 83]	1673
E. Abortion	1673
<i>Roe v. Wade</i>	1673
Notes	1683
[Assignment 84]	1688
Planned Parenthood v. Casey	1688
Notes	1713
[Assignment 85]	1720
<i>Dobbs v. Jackson Women's Health Organization</i>	1720
Notes	1754
[Assignment 86]	1756
F. Same-Sex Marriage.....	1756
<i>Obergefell v. Hodges</i>	1756
Notes	1782
[Assignment 87]	1784
V. Enforcement of the Reconstruction Amendments	1784
<i>Katzenbach v. Morgan</i>	1784
Notes	1794
<i>City of Boerne v. Flores</i>	1795
Notes	1802
Appendix. Articles of Confederation.....	1805
INDEX	1813