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INTRODUCTION

Brief description: Introduction to U.S. Constitutional Law is designed to impart a general understanding of select, core principals, of U.S. Constitutional Law

- **Titulación:** Anglo-American Law Program, Global Law Program, Grado en Derecho, Grado en Relaciones Internacionales
- **Módulo/Materia:** Optatividad, Derecho angloamericano
- **ECTS:** 3
- **Course and semester:** Third year, first semester
- **Character:** Optativa
- **Professor responsible for the subject:** Scott S. Wishart
- **Visiting Professor:** Thomas B. Metzloff (Duke University)
- **Idioma:** inglés
- **Schedule and Location:** The course will be delivered in an intensive format in the afternoon. You will have two parts: Prof. Wishart's part first in class on the week of February 19th and Prof. Metzloff's part will be from April 8th to 19th from 3:30 pm to 5:15 pm. See WebUntis timetable to check classrooms.

Please note that the schedule is subject to changes due to reasons beyond our control.

COMPETENCIAS

De acuerdo con la **Memoria del Grado en Derecho**, las competencias que los estudiantes deben llegar a dominar asociadas a las asignaturas Optativas vinculadas al Anglo-American Law Program del que forma parte esta asignatura son las siguientes:

Competencias básicas

CB1 - Que los estudiantes hayan demostrado poseer y comprender conocimientos en un área de estudio que parte de la base de la educación secundaria general, y se suele encontrar a un nivel que, si bien se apoya en libros de texto avanzados, incluye también algunos aspectos que implican conocimientos procedentes de la vanguardia de su campo de estudio.

CB2 - Que los estudiantes sepan aplicar sus conocimientos a su trabajo o vocación de una forma profesional y posean las competencias que suelen demostrarse por medio de la elaboración y defensa de argumentos y la resolución de problemas dentro de su área de estudio.

CB3 - Que los estudiantes tengan la capacidad de reunir e interpretar datos relevantes (normalmente dentro de su área de estudio) para emitir juicios que incluyan una reflexión sobre temas relevantes de índole social, científica o ética.

CB4 - Que los estudiantes puedan transmitir información, ideas, problemas y soluciones a un público tanto especializado como no especializado.

CB5 - Que los estudiantes hayan desarrollado aquellas habilidades de aprendizaje necesarias para emprender estudios posteriores con un alto grado de autonomía



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Competencias generales

CG1 - Poseer un conocimiento general de la disciplina y la metodología jurídicas que permita el ejercicio de actividades de carácter profesional en el ámbito del Derecho o la adquisición de los títulos complementarios exigidos por la ley para determinadas actividades profesionales.

CG2 - Expresar y transmitir adecuadamente ideas complejas que permitan comunicar, de manera oral y escrita, soluciones fundadas en Derecho a un público especializado o no.

CG3 - Localizar y gestionar correctamente las fuentes jurídicas, tanto legales, jurisprudenciales y doctrinales.

Competencias específicas

CEE1 Conocer los conceptos jurídicos básicos de la tradición jurídica angloamericana de forma que se pueda comunicar en inglés oralmente o por escrito sus principales características en sus ámbitos principales.

SYLLABUS

Part I *AN INTRODUCTION TO U.S. CONSTITUTIONAL LAW*

Class Session 1. REVIEW OF THE EXERCISES IN CHAPTERS 2 & 3: SOURCES OF LAW

SOURCES OF LAW - Chapter 2 in: *A practical guide to Legal Writing and Legal Method*, John C. Dernbach et al., Rothman Publications (1994).

Class Session 2. INTRODUCTION; CHAPTER 4: STARE DECISIS & PRECEDENT

Introduction and Overview

STARE DECISIS & PRECEDENT - Chapter 4 in: *A practical guide to Legal Writing and Legal Method*, John C. Dernbach et al., Rothman Publications (1994).

Class Session 3. INTRODUCTION; CHAPTER 4: STARE DECISIS & PRECEDENT

Introduction and Overview

STARE DECISIS & PRECEDENT - Chapter 4 in: *A practical guide to Legal Writing and Legal Method*, John C. Dernbach et al., Rothman Publications (1994).

Class Sessions 4. ANALYSIS OF THE HISTORY, FORMATION, AND DEVELOPMENT OF THE FOUNDING DOCUMENTS OF THE U.S.A.

Historical Background and Formation of United States.

Documents & Articles to include (among others): The Declaration of Independence of the U.S. A., The Articles of Confederation of the U.S.A., The Constitution of the U.S.A., The U.S. Central Intelligence Agency World Fact Book.

Class 5. REVIEW

Class 6. Final Exam

Part II *American Constitutional Law*



TOPIC 1 INTRODUCTION: The Constitution and the Supreme Court **TOPIC 1: UNDERSTAND THE UNITED STATES SUPREME COURT** (18 PAGES) We will begin by considering a number of important topics to help frame how to think about American Constitutional Law. This begins with an understanding of what the Court is and who are its members. The Constitution gives the President the power to nominate Justices to the Supreme Court. The US Senate has the power to confirm the nomination. Who should the President select? On February 13, 2016, Justice Antonin Scalia died after serving as a Justice of the Supreme Court for almost 30 years. He was the leader of the Court's conservative wing and among the most influential Justices of all time. The question who would replace Justice Scalia became a major political controversy and was at the center of the 2016 U.S. Presidential election that resulted in the election of Donald Trump. The same scenario presented itself in 2020 when right before the Presidential election, Justice Ruth Bader Ginsburg passed away. We will also discuss how the Supreme Court does its work, particularly its most important duty of interpreting the U.S. Constitution. **FEATURED DOCUMENTARY:** *Earls v. Tecumseh*.

TOPIC 2: INTERPRETING THE CONSTITUTION: GUN CONTROL AND THE SECOND AMENDMENT (15 PAGES) How does the Supreme Court go about interpreting the Constitution? What role does history have in the process? Is the goal to determine what the "Founding Fathers" (those who wrote the Constitution) meant in 1791? How should the Court adjust to changing world conditions or to situations that the Founders could never have anticipated? We will consider that question in the context of gun control. There is a terrific debate in the U.S. about what should be done to deal with the shocking amount of gun violence. Can governments limit access to guns? At the heart of the debate is the meaning of the Constitution's Second Amendment that describes a right to "bear arms" at least in the context of service in a state militia. How should this provision – written in the 18th century – be interpreted to deal with a very different set of modern problems and concerns?

TOPIC 3: DUE PROCESS AND THE "PROBLEM" OF PUNITIVE DAMAGES (18 PAGES) Punitive damages are used in the US to control "bad" conduct by corporations. But there is a risk that juries will award too much and unfairly penalize companies. In the 1980's, a series of constitutional challenges were raised to determine what limits, if any, should be imposed. The Constitution guarantees "due process" to individuals and corporations. But what does that term mean? When should the Supreme Court intervene to "solve" what it perceives as a problem by expanding the meaning of "due process"? **FEATURED DOCUMENTARY:** *BWM v. Gore*

TOPIC 4: PROTECTING PROPERTY: THE TAKINGS CLAUSE (14 PAGES) Private property is valued in the United States, but there are times when land is needed by the government to promote the public good (building highways or schools for example). The Constitution requires that any such "takings" of property be for a public use. What happens when the land being taken seems to be for the benefit of private interests? That issue was presented in *Kelo v. New London*, when a small city wanting to improve its economic future tried to take the homes of several people in neighborhood in order to develop the area. **FEATURED DOCUMENTARY:** *Kelo v. New London*

TOPIC 5: THE FIRST AMENDMENT AND THE ESTABLISHMENT CLAUSE (17 PAGES) An important aspect of the First Amendment is its prohibition against the "establishment" of religion. While that clearly means that there cannot be an official religion in the United States, does it mean that there must be a high "wall of separation" between church and state as suggested by President Thomas Jefferson in the 19th century? Or does the Constitution permit a more accommodating approach to religion? One area where the Supreme Court has struggled in implementing the Establishment Clause is the extent to which religious symbols can be displayed on public property. What significance does a passerby ascribe to a religious monument on public grounds? **FEATURED DOCUMENTARY:** *Van Orden v. Perry*



TOPIC 6: THE FIRST AMENDMENT AND HATE SPEECH (17 PAGES) Freedom of expression is an important American Constitutional value embraced in the First Amendment. But what happens when the speech is considered offensive by the wide majority of the people? Should racial insults by members of groups like the Ku Klux Klan (with a long history of promoting racial violence) be permitted? This chapter considers how the Supreme Court approaches difficulty topics of offensive or hateful speech under the First Amendment, in cases such as *United States v. Virginia*. **FEATURED DOCUMENTARY:** *Virginia v. Black*

TOPIC 7: THE RIGHT TO PRIVACY AND THE BATTLE OVER ABORTION (19 PAGES) Abortion has been one of America's most controversial legal and political issues since the Supreme Court held in *Roe v. Wade* (1973) that the right to abortion is protected under the right to privacy established by the Constitution. Since that time, the issue has been a mainstay of American political discussion including the 2016 election when Donald Trump stated that he would appoint Justices who would overrule *Roe v. Wade*. This topic will focus on the Supreme Court's cases in the abortion area and the subsequent cultural wars in the U.S. that continue to this day. **FEATURED DOCUMENTARY:** *Stenberg v. Carhart*

TOPIC 8: EQUAL PROTECTION AND RACE: THE CHALLENGE OF AFFIRMATIVE ACTION (18 PAGES) One of the core values in the US Constitution is the requirement that all citizens are to be afforded "equal protection." Historically, the central focus of equal protection has been dealing with race. For over a generation, US courts worked to eradicate formal legal discrimination. But once that goal was achieved, racial discrimination still was present. Efforts were made to establish government program designed to equalize opportunities by providing benefits to racial minorities. How should the constitutional guarantee of equal protection apply to these so-called "affirmative action" programs like those involved in *Grutter v. University of Michigan*?

TOPIC 9: EQUAL PROTECTION AND GENDER AND SEXUAL ORIENTATION: CONSIDERING SAME SEX-MARRIAGE (15 PAGES) The Supreme Court's approach to equal protection was largely developed in the context of discrimination based upon race. But how will the equal protection be applied to discrimination based upon other characteristics such as gender or sexual orientation? Strong arguments can be made that governmental discrimination on the basis of those characteristics has also had serious impacts. Should the same principles be applied to strike down differences in legal treatment based upon one's gender or sexual orientation? **FEATURED DOCUMENTARIES:** *United States v. Virginia* and *Romer v. Evans*.

TOPIC 10: DEMOCRACY IN AMERICA: PROTECTING INTEGRITY OF THE ELECTION PROCESS (15 PAGES) Every 10 years, the US Constitution requires that a complete counting of its citizens – known as a census – be conducted. The Census results in the redrawing of election districts throughout the country based on changes in population. One of the most important issues in the U.S. is how we safeguard our democratic process. The U.S. has long been committed to "one person, one vote" as a constitutional norm, but what exactly does that mean? Many of our legislatures are creating election districts to maximize their parties' success by "gerrymandering" the districts in unusual ways. Does political "gerrymandering" violate the Constitution?

EDUCATIONAL ACTIVITIES

Theory in-class instruction and discussion periods: 15 h

Practical in-class periods: 15 h

Pre-class preparation of reading assignments /research/case solving: 15 h

Personal study and exam preparation (personal notes and notebooks): 30 h



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Reaction papers to videos: 15 h

Examination: 5 h

Course Content Objectives:

Upon completion of this course a student will have;

- Developed a fundamental understanding of U.S. Constitutional Law, its history and elements of its ongoing evolution.
- An appreciation of the role of U.S. Constitutional Law within the U.S. legal system.
- Developed an insight into the U.S. Supreme Court's analytical process.
- Come to understand some of the historical antecedents in the U.S. Supreme Court's decision making process.
- Developed an understanding of the U.S. Supreme Court's "tests" in several fundamental areas of U.S. Constitutional Law.

Course Skills:

Upon completion of this course a student will have developed the following skills:

- Improved their ability to express themselves, both orally and in writing, in English.
- Come to better understand the Common Law methodology in U.S. case law analysis.
- "Brief" a case, and perform competent U.S. case law analysis and application.
- Comprehend and apply several fundamental U.S. Supreme Court "tests" to a case hypotheticals.

Course Performance Objectives:

Upon completion of this course a student will have developed the ability to:

- Open their minds to the process of "Active Listening"; i.e. to be able to "Listen", "Think" and "Respond" during class discussion.
- Overcome their reluctance to participate orally in class discussion.
- Appreciate the benefits of sharing their individual thoughts and insights to enhance the richness of the classroom experience.
- Work hard to improve their ability to express themselves, both orally and in writing, in English.
- Prepare for class discussions in advance by reading course materials in advance.
- Participate actively in class, by responding to questions posed by the professor, and posing questions themselves.

ASSESSMENT

CONVOCATORIA ORDINARIA

- Class attendance is mandatory and does not add points to your grade.
- Class Participation is highly recommended and therefore, pre-class preparation of assigned readings for in-class discussions is very necessary.

The course grade is divided in two parts:



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1. Part I lectured by Prof. Scott S. Wishart is worth 30% of the whole grade and it is distributed as follows:

- A Closed-Book Final Exam in the Adi platform.

- Class Participation will be awarded with an extra 0,5 points. In no case, will this extra points be added to a failing grade.

2. Part II lectured by Prof. Thomas B. Metzloff is worth 70% of the whole grade. This part is evaluated by a final exam. It is an open-book exam.

CONVOCATORIA EXTRAORDINARIA

The June exam will be worth 100 % of the grade.

OFFICE HOURS

Professor Scott S. Wishart is available by appointment (swishart@unav.es) in Office 1650 in the Library Building.

Professor Thomas B. Metzloff is available in the mornings during his visit with us by appointment (metzloff@law.duke.edu) in office 1780 in the Library Building.

Patricia Palomino, Coordinator of the International Programs of the School of Law, any problem or request you may have related to the English taught courses, I am available at the Offices of the Secretaría de Derecho in the following schedule:

Every week day from 13:00 to 14:00

You may also ask for a special appointment by email if this schedule does not suit you well.

If the issue affects all the class, I would much rather receive the student delegate or his representative for the Programs. I will be very glad to be of your assistance.

BIBLIOGRAPHY

A Practical Guide to Legal Writing and Legal Method, John C. Dernbach et al., Rothman Publications (1994).

[Link to this book at the Library \(Ed. 2017\)](#)

U.S. Central Intelligence Agency World Fact Book (Excerpts)

U.S. Constitutional Law (Class material)

Recommended Additional Readings:

Constitutional Law (16th Ed.), K. Sullivan & G. Gunther, Foundation Press (2007).

Constitutional Law in Context (2nd Ed.) Vols. 1 & 2, M.K. Curtis et al, Carolina Academic Press (2006).