

JUDGE BRETT M. KAVANAUGH
SENATE JUDICIARY COMMITTEE
QUESTIONNAIRE

APPENDIX 19
TEACHING SYLLABI

**Separation of Powers
Harvard Law School
Winter Term 2008
46305A-1
3 credits
Brett M. Kavanaugh**

Contact Information

Email (for quickest response): [REDACTED]

Other email: [REDACTED]

Phone: [REDACTED]

Textbook

Shane and Bruff, Separation of Powers Law (2d ed. 2005)

We also will have readings of the Constitution and the Federalist Papers.

Grading

75% -- Three-hour exam on Tuesday, January 22, 2008, at 2:00 p.m.

25% -- Class Participation

Requirements

This class will operate much like a seminar. Everyone is invited and expected to participate in class discussions. For each class, eight students will be on call, meaning that they are expected to participate in the discussions that day. The students who are not on call also are invited and expected to participate.

When a student is on call for a class, he or she must email me before class a short observation, comment, or question about the readings; this email should be sent to me no later than 8:00 p.m. the preceding night.

Office Hours

I will be available to see you whenever you want to see me. I will be in the Areeda 135 office at least from 2:00 p.m. to 7:00 p.m. every weekday from Wednesday, January 2 through Thursday, January 17. And you can schedule a separate time with me by emailing me, calling me, or setting up a time with me after class.

Dinners and Class Get-Together

I would like to have casual dinners with small groups of the class throughout the Winter Term, preferably the 3rd, 8th, 9th, 10th, 14th, 15th, and 16th. Groups of 4 to 5 students each night are preferred, but I am open to larger or smaller groups depending on your availability. On the evening of Thursday the 17th, we will have a whole-class outing to a local establishment.

Class Schedule and Assignments

Week 1

Wednesday January 2 – Introduction; Electing the President

S&B 1003-1068, 1074-1093

The Constitution

Thursday January 3 – Appointing Judges; Electing and Expelling Members of Congress

S&B 430-447, 265-271

The Federalist 76, 77, 78

Friday, January 4 – Removing Presidents and Judges; Impeachment

S&B 229-264

Week 2

Monday, January 7 – Unitary Executive; Appointing and Removing Executive Officers

S&B 417-430, 447-474, 478-499

The Federalist 69 and 70

Tuesday, January 8 – Presidential Powers of Prosecution, Pardon, and Interpretation of the Constitution and Laws

S&B 564-587, 594-611

Wednesday, January 9 – Administration of the Executive Branch; The President's Role in Legislation and the President's Veto Power

S&B 150-180, 499-513, 519-528, 544-552

Thursday, January 10 – Congress's Power of the Purse; Appropriations and Spending; Line-Item Veto

S&B 92-112, 180-221

Friday, January 11 – Executive Privileges; Congressional Oversight and Regulation of the Executive Branch

S&B 318-373 (also browse 373-405)

Week 3

Monday, January 14 – Immunities
S&B 272-318

Tuesday, January 15 – War, National Security, and Foreign Policy
S&B 65-83, 613-629, 639-660

Wednesday, January 16 – War, National Security, and Foreign Policy
S&B 675-693, 721-754

Thursday, January 17 – War, National Security, and Foreign Policy
S&B 807-820, 841-857, 872-901

Friday, January 18 – War, National Security, and Foreign Policy; Conclusion
S&B 901-914, 918-939, 955-988
Please also re-read the Constitution in full for the last class.

Separation of Powers
Harvard Law School
Winter Term 2009
46305A
3 Credits
Brett M. Kavanaugh

Contact Information

Email (for quickest response): [REDACTED]
[REDACTED]

Other email: [REDACTED]

Phone: [REDACTED]

Textbook

Shane and Bruff, Separation of Powers Law (2d ed. 2005)

We also will have readings from the Constitution and the Federalist Papers. In addition, we will have handouts of a few more recent cases in the war powers area.

Grading

75% -- Three-hour exam on Monday, January 26, 2009, at 2:00 p.m.

25% -- Class Participation

Requirements

This class will operate much like a seminar. Everyone is invited and expected to participate in class discussions. For each class, seven or eight students will be on call, meaning that they are expected to participate in the discussions that day. The students who are not on call also are invited and expected to participate.

When a student is on call for a class, he or she must email me before class a short observation, comment, or question about the readings; this email should be sent to me no later than 8:00 p.m. the preceding night.

Office Hours

I will be available to see you whenever you want to see me. I will be in the Areeda 229 office at least from 2:00 p.m. to 6:00 p.m. every weekday from Monday, January 5 through Wednesday, January 21. I encourage you to visit. And you can schedule a separate time with me by emailing me, calling me, or setting up a time with me after class.

Dinners and Class Get-Together

I would like to have casual dinners with small groups of the class throughout the Winter Term, preferably the 6th, 7th, 8th, 13th, 14th, and 15th. Groups of 3 to 5 students each night are preferred, but I am open to larger or smaller groups depending on your availability. On the evening of Wednesday the 21st, we will have a whole-class outing to a local establishment.

2009
Class Schedule and Assignments

Monday, January 5 – Introduction; Electing the President

The Constitution

S&B 1076-1093, 1003-1068

Tuesday, January 6 – Appointing Judges; Electing and Expelling Members of Congress

The Federalist 47-48, 76-79

S&B 430-441, 265-271

Wednesday, January 7 – Removing Presidents and Judges; Impeachment

S&B 229-264

Thursday, January 8 – Single President; Appointing and Removing Executive Officers

The Federalist 69-70

S&B 417-430, 447-474, 478-499

Friday, January 9 – Presidential Powers of Prosecution, Pardon, and Interpretation of the Constitution and Laws

S&B 564-587, 598-611

Monday, January 12 – Administration of the Executive Branch; The President's Role in Legislation and the President's Veto Power

S&B 499-528, 544-552, 150-155, 162-180

Tuesday, January 13 – Congress's Power of the Purse; Appropriations and Spending; Line-Item Veto; Speech or Debate Clause

S&B 92-112, 180-186, 195-202, 206-221, 272-281

Wednesday, January 14 – Congressional Oversight and Regulation of the Executive Branch; Executive Privileges and Immunities

S&B 320-332, 340-373, 381-405

Thursday, January 15 – Executive Privileges and Immunities

S&B 272-318

Friday, January 16 – War, National Security, and Foreign Policy

S&B 65-83, 613-628, 675-693

Tuesday, January 20 – War, National Security, and Foreign Policy

S&B 807-820, 841-857, 872-888, 901-914, 918-939

Wednesday, January 21 – War, National Security, and Foreign Policy

S&B 721-754, 955-988; Hamdan v. Rumsfeld excerpts

Thursday, January 22 – War, National Security, and Foreign Policy; Summary
Boumediene v. Bush excerpts; please also re-read the Constitution for the last class

**Separation of Powers
Harvard Law School
Winter Term 2010
46305A
3 Credits
Hauser 104
Brett M. Kavanaugh**

Contact Information

Email: [REDACTED]
[REDACTED]

Cell Phone: [REDACTED]

Textbook

Shane and Bruff, Separation of Powers Law (2d ed. 2005)

We will have readings from the Constitution and the Federalist Papers. We also will have handouts of a few more recent cases in the war powers area.

Grading

75% -- Three-hour exam on Saturday, January 23, 2010 at 9:00 a.m.

or paper option in lieu of exam due Friday, February 12, 2010

25% -- Class Participation

Requirements

This class will operate much like a seminar. Everyone is invited and expected to participate in class discussions. For each class, eleven or twelve students will be on call, meaning that they are expected to participate in the discussions on those assigned readings. The students who are not on call also are invited and expected to participate regularly.

When a student is on call for a class, he or she must email me before class a short observation, comment, or question about the readings; this email should be sent to me no later than 8:00 p.m. the preceding night.

Office Hours

I will be available to see you whenever you want to see me. I encourage you to come by my office. Unless I notify you otherwise, I will be in the Areeda 132 office at least from 2:00 p.m. to 6:00 p.m. every weekday from Monday, January 4 through Wednesday, January 20. And you can schedule a separate time with me by emailing me, calling me, or setting up a time with me after class.

Dinners and Class Get-Together

I would like to have casual dinners with small groups of the class throughout the Winter Term, preferably on the 5th, 6th, 7th, 10th, 11th, and 12th. There will be a sign-up sheet in the front of the classroom. Groups of 5-7 students each night are preferred. On the evening of Tuesday the 19th, we will have a whole-class outing to John Harvard's.

Class Schedule and Assignments

Monday, January 4 – Introduction; Electing the President

The Constitution

S&B 1076-1093, 1003-1006, 1021-1068

Tuesday, January 5 – General Principles; Appointing Judges; Electing and Expelling Members of Congress

The Federalist 47-48, 76-79

S&B 40-42, 430-441, 265-271

Wednesday, January 6 – Removing Presidents and Judges; Impeachment

S&B 229-264

Thursday, January 7 – Single President; Appointing and Removing Executive Officers

The Federalist 69-70

S&B 417-430, 447-474, 478-499

Friday, January 8 – Presidential Powers of Prosecution, Pardon, and Interpretation of the Constitution and Laws

S&B 564-587, 598-611

Monday, January 11 – Administration of the Executive Branch; The President's Role in Legislation and the President's Veto Power

S&B 499-528, 544-552, 150-155, 162-180

Tuesday, January 12 – Congress's Power of the Purse; Appropriations and Spending; Line-Item Veto; Speech or Debate Clause

S&B 92-112, 180-186, 195-202, 206-221, 272-281

Wednesday, January 13 – Congressional Oversight and Regulation of the Executive Branch; Executive Privileges and Immunities

S&B 287-317, 320-332, 340-373

Thursday, January 14 – Executive Privilege; War, National Security, and Foreign Policy

S&B 381-405, 65-83, 613-628, 675-693

Friday, January 15 – War, National Security, and Foreign Policy

S&B 807-820, 841-857, 872-888, 901-914, 918-939

Tuesday, January 19 – War, National Security, and Foreign Policy

S&B 721-754, DOJ memo excerpts, 955-988

Wednesday, January 20 – War, National Security, and Foreign Policy

Hamdan v. Rumsfeld excerpts; Boumediene v. Bush excerpts

Thursday, January 21 – Follow-up and Summary

Boumediene; please re-read the Constitution in full for the last class

**Separation of Powers
Harvard Law School
Winter Term 2011
46305A
3 Credits
Brett M. Kavanaugh**

Contact Information

Email: [REDACTED]
[REDACTED]

Cell Phone: [REDACTED]

Textbook

Shane and Bruff, Separation of Powers Law (2d ed. 2005)

We will have readings from the Constitution and the Federalist Papers. We also will have handouts of a few recent cases.

Grading

75% -- Three-hour exam on Friday, January 21, 2011 at 9:00 a.m.

or paper option in lieu of exam due Friday, February 11, 2011

25% -- Class Participation

Requirements

This class will operate much like a seminar. Everyone is invited and expected to participate in class discussions. For each class, about 14-18 students will be on call, meaning that they are expected to participate in the discussions on those assigned readings. The students who are not on call also are invited and expected to participate regularly.

When a student is on call for a class, he or she must email me before class a short observation, comment, or question about the readings; this email should be sent to me no later than 8:00 p.m. the preceding night.

Office Hours

I will be available to see you whenever you want to see me. I encourage you to come by my office. Unless I notify you otherwise, I will be in the Areeda 133 office at least from 2:00 p.m. to 5:00 p.m. Monday-Thursday during the weeks of the 3rd and 10th. I also will be in my office for those same hours on Monday the 17th and Tuesday the 18th. And you can schedule a separate time with me by emailing me, calling me, or setting up a time with me after class.

Dinners and Class Get-Together

I would like to have casual dinners with small groups of the class throughout the Winter Term, preferably on the 4th, 5th, 6th, 10th, 11th, and 12th. There will be a sign-up sheet in the front of the classroom. Groups of 6-8 students each night are preferred. On the evening of Thursday the 13th, we will have a whole-class pizza outing to John Harvard's.

Class Schedule and Assignments

Monday, January 3 – Introduction; Electing the President

The Constitution

S&B 1076-1093, 1003-1006, 1021-1068

Tuesday, January 4 – General Principles; Appointing Judges; Electing and Expelling Members of Congress

The Federalist 47-48, 76-79

S&B 40-42, 430-441, 265-271

Wednesday, January 5 – Removing Presidents and Judges; Impeachment

S&B 229-264

Thursday, January 6 – Single President; Appointing and Removing Executive Officers

The Federalist 69-70

S&B 417-427, 447-474, 478-499

Friday, January 7 – Appointing and Removing Executive Officers; Presidential Powers of Prosecution, Pardon, and Interpretation of the Constitution and Laws

Free Enterprise v. PCAOB excerpt

S&B 564-587, 598-611

Monday, January 10 – Administration of the Executive Branch; The President's Role in Legislation and the President's Veto Power

S&B 499-528, 544-552, 150-155, 162-180

Tuesday, January 11 – Congress's Power of the Purse; Appropriations and Spending; Line-Item Veto; Speech or Debate Clause

S&B 92-112, 180-186, 195-202, 206-221, 272-281

Wednesday, January 12 – Congressional Oversight and Regulation of the Executive Branch; Executive Privileges and Immunities

S&B 287-307, 320-332, 340-373, 393-400

Thursday, January 13 – War, National Security, and Foreign Policy

S&B 65-83, 613-628, 675-693

Friday, January 14 – War, National Security, and Foreign Policy

S&B 807-820, 841-857, 872-888, 901-914, 918-939

Tuesday, January 18 – War, National Security, and Foreign Policy

S&B 721-754, DOJ memo excerpts, 955-988

Wednesday, January 19 – War, National Security, and Foreign Policy; Summary

Hamdan v. Rumsfeld excerpts; Boumediene v. Bush excerpts; please also re-read the Constitution in full for the last class

**Separation of Powers
Harvard Law School
Winter Term 2011
46305A
3 Credits
Brett M. Kavanaugh**

Contact Information

Email: [REDACTED]
[REDACTED]

Cell Phone: [REDACTED]

Textbook

Shane and Bruff, Separation of Powers Law (2d ed. 2005)

We will have readings from the Constitution and the Federalist Papers. We also will have handouts of a few recent cases.

Grading

75% -- Three-hour exam on Friday, January 21, 2011 at 9:00 a.m.

or paper option in lieu of exam due Friday, February 11, 2011

25% -- Class Participation

Requirements

This class will operate much like a seminar. Everyone is invited and expected to participate in class discussions. For each class, about 14-18 students will be on call, meaning that they are expected to participate in the discussions on those assigned readings. The students who are not on call also are invited and expected to participate regularly.

When a student is on call for a class, he or she must email me before class a short observation, comment, or question about the readings; this email should be sent to me no later than 8:00 p.m. the preceding night.

Office Hours

I will be available to see you whenever you want to see me. I encourage you to come by my office. Unless I notify you otherwise, I will be in the Areeda 133 office at least from 2:00 p.m. to 5:00 p.m. Monday-Thursday during the weeks of the 3rd and 10th. I also will be in my office for those same hours on Monday the 17th and Tuesday the 18th. And you can schedule a separate time with me by emailing me, calling me, or setting up a time with me after class.

Dinners and Class Get-Together

I would like to have casual dinners with small groups of the class throughout the Winter Term, preferably on the 4th, 5th, 6th, 10th, 11th, and 12th. There will be a sign-up sheet in the front of the classroom. Groups of 6-8 students each night are preferred. On the evening of Thursday the 13th, we will have a whole-class pizza outing to John Harvard's.

Class Schedule and Assignments

Monday, January 3 – Introduction; Electing the President

The Constitution

S&B 1076-1093, 1003-1006, 1021-1068

Tuesday, January 4 – General Principles; Appointing Judges; Electing and Expelling Members of Congress

The Federalist 47-48, 76-79

S&B 40-42, 430-441, 265-271

Wednesday, January 5 – Removing Presidents and Judges; Impeachment

S&B 229-264

Thursday, January 6 – Single President; Appointing and Removing Executive Officers

The Federalist 69-70

S&B 417-427, 447-474, 478-499

Friday, January 7 – Appointing and Removing Executive Officers; Presidential Powers of Prosecution, Pardon, and Interpretation of the Constitution and Laws

Free Enterprise v. PCAOB excerpt

S&B 564-587, 598-611

Monday, January 10 – Administration of the Executive Branch; The President's Role in Legislation and the President's Veto Power

S&B 499-528, 544-552, 150-155, 162-180

Tuesday, January 11 – Congress's Power of the Purse; Appropriations and Spending; Line-Item Veto; Speech or Debate Clause

S&B 92-112, 180-186, 195-202, 206-221, 272-281

Wednesday, January 12 – Congressional Oversight and Regulation of the Executive Branch; Executive Privileges and Immunities

S&B 287-307, 320-332, 340-373, 393-400

Thursday, January 13 – War, National Security, and Foreign Policy

S&B 65-83, 613-628, 675-693

Friday, January 14 – War, National Security, and Foreign Policy

S&B 807-820, 841-857, 872-888, 901-914, 918-939

Tuesday, January 18 – War, National Security, and Foreign Policy

S&B 721-754, DOJ memo excerpts, 955-988

Wednesday, January 19 – War, National Security, and Foreign Policy; Summary

Hamdan v. Rumsfeld excerpts; Boumediene v. Bush excerpts; please also re-read the Constitution in full for the last class

**Separation of Powers
Harvard Law School
Winter Term 2012
3 Credits
Brett M. Kavanaugh**

Contact Information

Email: [REDACTED]
[REDACTED]

Cell Phone: [REDACTED]

Textbook

Shane and Bruff, Separation of Powers Law (3rd ed. 2011)

We also will have readings from the Constitution and the Federalist Papers.

Grading

Three-hour exam on Friday, January 20, 2012 or you may do a paper in lieu of the exam. If you do a paper, it is due by Wednesday, February 29, 2012. Class participation may increase your grade.

Requirements

This class has significant class participation and discussion. Everyone is invited and expected to participate in class discussions. For each class, about 12-15 students will be on call, meaning that they are expected to participate in the discussions on the assigned readings. The students who are not on call also are invited and expected to participate regularly.

When a student is on call for a class, he or she must email me before class a short observation, comment, or question about the readings; this email should be sent to me no later than 8:00 p.m. the preceding night.

Office Hours

I will be available to see you whenever you want to see me. I encourage you to come by my office. Unless I notify you otherwise, I will be in the Areeda 129 office at least from 2:30 p.m. to 5:30 p.m. Monday through Thursday during the weeks of the 2nd and 9th, as well as on Monday the 16th and Tuesday the 17th. And you can schedule a separate time with me by emailing me, calling me, or setting up a time with me after class.

Dinners and Class Get-Together

I would like to have casual dinners with groups of the class throughout the Winter Term, preferably on the 4th, 5th, 10th, and 11th. There will be a sign-up sheet in the front of the classroom. Groups of about 10 students each night are preferred, depending on our final class size. On the evening of Thursday the 12th, we will have a whole-class pizza outing to John Harvard's.

Class Schedule and Assignments

Tuesday, January 3 – Introduction; Electing the President

Please read the Constitution in full for the first class.

S&B 1139-1153, 1065-1068, 1083-1133

Wednesday, January 4 – General Principles; Appointing Judges; Electing and Expelling Members of Congress

The Federalist 47-48, 76-79

S&B 35-45, 393-408, 235-241

Thursday, January 5 – Removing Presidents and Judges; Impeachment; Appointing Executive Officers

The Federalist 69-70

S&B 207-234, 381-392

Friday, January 6 – Single President; Appointing and Removing Executive Officers

S&B 408-433, 436-472

Monday, January 9 – Administration of the Executive Branch; Presidential Powers of Prosecution, Pardon, and Interpretation of the Constitution and Laws

S&B 472-497, 516-522, 533-537, 542-544, 548-557, 572-581

Tuesday, January 10 – The President's Role in Legislation and the President's Veto Power; Congress's Power of the Purse; Appropriations and Spending; Line-Item Veto

S&B 86-102, 137-177, 188-199

Wednesday, January 11 – Speech or Debate Clause; Congressional Oversight and Regulation of the Executive Branch; Executive Privilege; Executive Immunities

S&B 241-267, 279-290, 311-316, 336-341, 348-366

Thursday, January 12 – War, National Security, and Foreign Policy

S&B 59-78, 583-602, 652-668, 805-819

Friday, January 13 – War, National Security, and Foreign Policy

S&B 838-856, 872-894, 900-913, 917-934

Tuesday, January 17 – War, National Security, and Foreign Policy

S&B 958-1029

Wednesday, January 18 – War, National Security, and Foreign Policy; Summary

S&B 693-736

Please also re-read the Constitution in full for the last class

**Separation of Powers
Harvard Law School
Winter Term 2014
3 Credits
Brett M. Kavanaugh**

Contact Information

Email: [REDACTED]
[REDACTED]

Cell Phone: [REDACTED]

Textbook

Shane and Bruff, Separation of Powers Law (3rd ed. 2011)

We also will have readings from the Constitution and the Federalist Papers, as well as from a few recent cases.

Grading

Three-hour exam on Friday, January 24, 2014, or you may do a paper in lieu of the exam. If you do a paper, it is due by Friday, February 28, 2014, at 5:00 pm. Class participation may increase your grade.

Requirements

This class has significant class participation and discussion. Everyone is invited and expected to participate in class discussions. For each class after the initial class, about 10 students will be on call, meaning that they are expected to participate in the discussions on the assigned readings. The students who are not on call also are invited and expected to participate regularly.

When a student is on call for a class, he or she must email me before class a short observation, comment, or question about the readings; this email should be sent to me at [REDACTED] Please send the email no later than 8:00 p.m. the preceding night.

Office Hours

I will be available to see you whenever you want to see me. I encourage you to come by my office. Unless I notify you otherwise, I will be in the Areeda 135 office at least from 2:00 p.m. to 5:00 p.m. Monday through Thursday during January 6th-9th and 13th-16th, as well as on Monday the 20th and Tuesday the 21st. And you can schedule a separate time with me by emailing me, calling me, or setting up a time with me after class.

Dinners and Class Get-Together

I would like to have casual dinners with groups of the class throughout the Winter Term, preferably on the 7th, 8th, 14th, and 15th. There will be a sign-up sheet in the front of the classroom. Groups of about 7-8 students each night are preferred. On the evening of Thursday the 16th, we will have a whole-class pizza/beverage outing to John Harvard's from 6:30 to 8:00.

Class Schedule and Assignments

Monday, January 6 – Introduction; Electing the President

Please read the Constitution in full for the first class.

S&B 1139-1153, 1065-1068, 1083-1133

Tuesday, January 7 – General Principles; Appointing Judges

The Federalist 47-48, 76-79

S&B 35-45, 86-102, 393-408

Wednesday, January 8 – Electing and Expelling Members of Congress; Removing Presidents and Judges; Impeachment; Appointing Executive Officers

The Federalist 69-70

S&B 235-241, 207-234, 381-392

Thursday, January 9 – Single President; Appointing and Removing Executive Officers

S&B 408-433, 436-472

Friday, January 10 – Administration of the Executive Branch; Presidential Powers of Prosecution, Pardon, and Interpretation of the Constitution and Laws

S&B 472-497, 516-522, 533-537, 542-557, 572-581

Monday, January 13 – The President's Role in Legislation and the President's Veto Power; Congress's Power of the Purse; Appropriations and Spending; Line-Item Veto

S&B 137-177, 188-199

Tuesday, January 14 – Speech or Debate Clause; Congressional Oversight and Regulation of the Executive Branch; Executive Privilege; Executive Immunities

S&B 241-267, 279-290, 311-316, 336-341, 348-366

Wednesday, January 15 – War, National Security, and Foreign Policy

S&B 59-78, 583-602, 652-663, 805-819, 821-823

Thursday, January 16 – War, National Security, and Foreign Policy

S&B 838-856, 872-894

Zivotofsky excerpts

Friday, January 17 – War, National Security, and Foreign Policy

S&B 905-913, 917-921, 928-934, 958-995

Tuesday, January 21 – War, National Security, and Foreign Policy

S&B 995-1049

Hamdan, Uthman D.C. Circuit excerpts

Wednesday, January 22 – War, National Security, and Foreign Policy; Summary

S&B 702-736

Please also re-read the Constitution in full for the last class.

**Separation of Powers
Harvard Law School
Fall Term 2015
3 Credits
Brett M. Kavanaugh**

Contact Information

Email: [REDACTED]

Cell Phone: [REDACTED]

Textbook

Shane and Bruff, Separation of Powers Law (3rd ed. 2011)

We also will have readings from the Constitution and the Federalist Papers, as well as from a few recent cases.

Grading

The course requires a paper. The paper is due on Tuesday, December 22 at 5:00 p.m. The target length of the paper should be approximately 20 pages, but you have some flexibility to vary the length as you think appropriate for the topic. I will provide some paper ideas as the class proceeds.

Please also note that class participation may increase your grade.

Requirements

This class has significant class participation and discussion. Everyone is invited to participate in class discussions. For each class after the initial class, about half of the students will be on call, meaning that they are expected to participate in the discussions on the assigned readings. The students who are not on call also are invited to participate regularly.

When a student is on call for a class, he or she must email me before class a short observation, comment, or question about the readings; this email should be sent to me at

[REDACTED] Please send the email no later than 12 noon on the day the class meets.

Office Hours

I will be available to see you whenever you want to see me. I will be in my office in Langdell 327 on Tuesdays (except for a 12:30-1:30 lunch break) on September 22, September 29, October 6, October 20, and October 27.

Dinners and Class Get-Together

I would like to have casual dinners with smaller groups of the class throughout the Term, preferably on Monday nights on September 21, September 28, October 5, and October 19. There will be a sign-up sheet in the front of the classroom. Groups of about 12-15 students each night are preferred. On the evening of Monday, October 26, we will have a whole-class pizza/beverage outing to John Harvard's after class.

Class Schedule and Assignments

Tuesday, September 8 – Introduction; Electing the President

The Constitution: Please read it in full for the first class.

S&B 1065-1068, 1083-1153

(Bush v. Palm Beach County; Bush v. Gore)

Monday, September 14 – General Principles; Appointing Judges

The Federalist 47-48, 76-79

S&B 35-45, 86-102, 393-408

(Marbury v. Madison; United States v. Richardson; Schlesinger v. Reservists Committee; Roosevelt Speech on the Judiciary)

Monday, September 21 – Electing and Expelling Members of Congress; Removing Presidents and Judges; Impeachment; Appointing Executive Officers

The Federalist 69-70

S&B 235-241, 207-234, 381-392

(Powell v. McCormack; Richard Nixon Impeachment materials; Clinton Impeachment materials; Walter Nixon v. United States; Buckley v. Valeo; Noel Canning excerpts)

Tuesday, September 22 – Single President; Appointing and Removing Executive Officers

S&B 408-433, 436-472

(Myers v. United States; Humphrey's Executor v. United States; Bowsher v. Synar; Morrison v. Olson; Free Enterprise Fund v. PCAOB)

Monday, September 28 – Administration of the Executive Branch; Presidential Powers of Prosecution, Pardon, and Interpretation of the Constitution and Laws

S&B 472-497, 516-522, 533-537, 542-557, 572-581

(Jewels of the Princess of Orange; Sierra Club v. Costle; Raines v. Byrd)

Tuesday, September 29 – The Non-Delegation Doctrine; The President's Role in Legislation and the President's Veto Power; Congress's Power of the Purse; Appropriations and Spending; Line-Item Veto

S&B 102-120; 137-177, 188-199

(Panama Refining; Whitman v. American Trucking; INS v. Chadha; Clinton v. City of New York)

Monday October 5 – Speech or Debate Clause; Congressional Oversight and Regulation of the Executive Branch; Executive Privilege; Executive Immunities

S&B 241-267, 279-290, 311-316, 336-341, 348-366

(Gravel v. United States; Nixon v. Fitzgerald; Clinton v. Jones; United States v. Richard Nixon; Richard Nixon v. GSA; Kissinger v. Reporter's Committee; Cheney v. U.S. District Court)

Tuesday, October 6 – War, National Security, and Foreign Policy

S&B 59-78, 583-602, 652-663, 805-819, 821-823

(Youngstown Sheet and Tube v. Sawyer; United States v. Curtiss-Wright; Dames & Moore v. Regan; Little v. Barreme; The Prize Cases; 2001 AUMF; Gulf of Tonkin Resolution)

Monday, October 19 – War, National Security, and Foreign Policy

S&B 838-856, 872-894

(Mora v. McNamara; War Powers Resolution; Campbell v. Clinton;
Zivotofsky excerpts)

Tuesday, October 20 – War, National Security, and Foreign Policy

S&B 905-913, 917-921, 928-934, 958-995

(1991 Iraq AUMF; 2002 Iraq AUMF; OLC opinions on Detention; Hamdi v. Rumsfeld)

Monday, October 26 – War, National Security, and Foreign Policy

S&B 995-1049

(Hamdan v. Rumsfeld; Boumediene v. Bush; Guantanamo readings)

Tuesday, October 27 – War, National Security, and Foreign Policy; Summary

S&B 702-736

(Surveillance)

Please also re-read the Constitution in full for the last class.

The Supreme Court 2005-2015
Harvard Law School
Winter Term 2016
2 Credits
Brett M. Kavanaugh

Contact Information

Email:

Cell Phone:

Readings

We will read Supreme Court cases from the last ten years.

Grading

The course requires a paper. The paper is due on Thursday, March 31, 2016, at 5:00 p.m. The target length of the paper should be approximately 20 pages, but you have flexibility to vary the length as you think appropriate for your topic. You may email the final paper to me. You may write about any of the cases or issues we cover in class. You have substantial flexibility on the topic and direction of the paper.

Please note that class participation may increase your grade.

Requirements

Final paper and class participation.

Office Hours

For the two weeks of the Winter Term, I will be in my office in Griswold 350 on Monday-Thursday afternoons between 2:00 and 4:30.

Dinners

I will schedule casual dinners with smaller groups of the class during the two weeks of the Term.

Class Schedule and Assignments

Monday, January 4 – Separation of Powers

Free Enterprise Fund v. Public Company Accounting Oversight Board (2010)
Zivotofsky v. Clinton (2012)
Zivotofsky v. Kerry (2015)

Tuesday, January 5 – National Security

Hamdan v. Rumsfeld (2006)
Boumediene v. Bush (2008)

Wednesday, January 6 – Fourth Amendment

United States v. Jones (2012)
Maryland v. King (2013)
Riley v. California (2014)

Thursday, January 7 – Death Penalty

Kennedy v. Louisiana (2008)
Glossip v. Gross (2015)

Friday, January 8 – Campaign Finance

Citizens United v. FEC (2010)
McCutcheon v. FEC (2014)

Monday, January 11 – Health Care Law

NFIB v. Sebelius (2012)
King v. Burwell (2015)

Tuesday, January 12 – Religion

Hosanna-Tabor v. EEOC (2012)
Town of Greece v. Galloway (2014)
Burwell v. Hobby Lobby Stores, Inc. (2014)

Wednesday, January 13 – Environmental Law/Second Amendment

Massachusetts v. EPA (2007)
D.C. v. Heller (2008)

Thursday, January 14 – Federalism/Equal Protection

Bond v. United States (2014)
Shelby County v. Holder (2013)
Fisher v. University of Texas (2013)

Friday, January 15 – Equal Protection

United States v. Windsor (2013)
Obergefell v. Hodges (2015)

UPDATED SYLLABUS

The Supreme Court 2005-2016
Harvard Law School
Spring Term 2017
3 Credits
Brett M. Kavanaugh

Contact Information

Email: [REDACTED]

Cell Phone: [REDACTED]

Readings

We will read Supreme Court cases from the Roberts Court.

Grading

The course requires a paper. The paper is due on May 5, 2017, at 5:00 p.m. The target length of the paper should be approximately 20-25 pages, but you have flexibility to vary the length as you think appropriate for your topic. You may email the final paper to me. You may write about any of the cases or issues we cover in class. You have substantial flexibility on the topic and direction of the paper.

Please note that class participation may increase your grade.

Requirements

Final paper and class participation.

Office Hours

I will be in Areeda 135 on Mondays from 2:00 to 4:00 on most Mondays.

Dinners

I will schedule casual dinners with smaller groups of the class on March 20, March 27, and April 3. We will have an all-class outing on April 10.

Class Schedule and Assignments

Monday, January 23 – Fourth Amendment

United States v. Jones (2012)
Maryland v. King (2013)
Riley v. California (2014)

Monday, February 6 – Separation of Powers and Federalism

Free Enterprise Fund v. Public Company Accounting Oversight Board (2010)
Zivotofsky v. Clinton (2012)
Bond v. United States (2014)

Monday, February 20 – Health Care Law

NFIB v. Sebelius (2012)
King v. Burwell (2015)

Monday, February 27 – National Security

Hamdan v. Rumsfeld (2006)
Boumediene v. Bush (2008)

Monday, March 6 – Death Penalty

Kennedy v. Louisiana (2008)
Glossip v. Gross (2015)

SPRING BREAK – NO CLASS on March 13

Monday, March 20 – Religion

Hosanna-Tabor v. EEOC (2012)
Town of Greece v. Galloway (2014)
Burwell v. Hobby Lobby Stores, Inc. (2014)

Monday, March 27 – Campaign Finance and Environmental Law

Citizens United v. FEC (2010)
Massachusetts v. EPA (2007)

Monday, April 3 -- Second Amendment

D.C. v. Heller (2008)
McDonald v. City of Chicago (2010)

Monday, April 10 -- Equal Protection/Race

Shelby County v. Holder (2013)
Fisher v. University of Texas (2016)

Monday, April 17 – Substantive Due Process/Equal Protection/Marriage/Abortion

United States v. Windsor (2013)
Obergefell v. Hodges (2015)
Whole Woman's Health v. Hellerstedt (2016)

**The Supreme Court Since 2005
Harvard Law School
Winter Term 2018
2 Credits
Brett M. Kavanaugh**

Contact Information

Email:

Cell Phone:

Readings

We will read Supreme Court cases.

Grading

The course requires a paper. The paper is due on Wednesday, March 28, 2018, at 5:00 p.m. The target length of the paper should be approximately 20 pages, but you have flexibility to vary the length as you think appropriate for your topic. You may email the final paper to me. You may write about any of the cases or issues we cover in class. You have substantial flexibility on the topic and direction of the paper.

During the term, you also will have to do several reaction emails of a paragraph or two about the readings. Those emails will not affect your grade; their purpose is to facilitate class discussion.

Please note that class participation may increase your grade.

Requirements

Final paper; occasional reaction emails; and class participation.

Office Hours

I will be in Areeda 132 during the term on Mondays through Thursdays from 2:30 to 4:30.

Dinners

I will schedule casual dinners with small groups of the class during the two weeks of the term.

Class Schedule and Assignments

Tuesday, January 2 – Fourth Amendment

United States v. Jones (2012)

Maryland v. King (2013)

Riley v. California (2014)

Wednesday, January 3 – Separation of Powers

Free Enterprise Fund v. Public Company Accounting Oversight Board (2010)

Zivotofsky v. Clinton (2012)

Thursday, January 4 – National Security

Hamdan v. Rumsfeld (2006)

Zivotofsky v. Kerry (2015)

Friday, January 5 – Health Care Law

NFIB v. Sebelius (2012)

King v. Burwell (2015)

Monday, January 8 – Death Penalty

Kennedy v. Louisiana (2008)

Glossip v. Gross (2015)

Tuesday, January 9 – Religion

Town of Greece v. Galloway (2014)

Burwell v. Hobby Lobby Stores, Inc. (2014)

Trinity Lutheran v. Comer (2017)

Wednesday, January 10 – Campaign Finance

Citizens United v. FEC (2010)

Bluman v. FEC (D.D.C. three-judge district court, 2011), affirmed by Supreme Court order (2012)

Thursday, January 11 – Second Amendment

D.C. v. Heller (2008)

McDonald v. City of Chicago (2010)

Friday, January 12 – Equal Protection

Shelby County v. Holder (2013)

Fisher v. University of Texas (2016)

Obergefell v. Hodges (2015)

National Security and Foreign Relations Law
Yale Law School
Fall 2011
2 Units
Brett M. Kavanaugh

Class Dates and Times

Class will meet from 6:10 p.m. to 9:00 p.m. on the followings Mondays:

September 12

September 26

October 3

October 17

November 7

November 14

November 28

December 12

Contact Information

Email: [REDACTED]

Cell Phone: [REDACTED]

Textbook

Bradley and Goldsmith, Foreign Relations Law (3rd Edition 2009). We also will have supplemental cases and materials that will be made available on the course website.

Grading

Your grade will be based on your paper and class participation.

Course Requirements

1. Participation in class.
2. Email me before class a short observation, comment, or question about the readings; this email should be sent to me no later than 12 noon on the day of class. Only a paragraph or two is expected. You should also post your observation on the course discussion forum on the course website so that all of you can read the comments. Your observation is not graded for substance or counted for your grade.
3. Final paper: You can choose a topic of your interest, but you should run it by me at some point during the semester. Also, I will give you a number of possible topics during the semester for you to consider, although you are free of course to pick your own. I would prefer to receive the papers by the end of the semester, which is in mid-January, but I recognize that may not be achievable for you. I will be flexible, within the standard of Yale Law School reasonableness.

Dinners and Class Get-Together

I would like to have casual dinners with small groups of the class throughout the Term, preferably after class on September 26, October 3, October 17, and November 7. Groups of 5-6 are preferred. On the evening of Monday, December 12th, we will have a whole-class pizza outing.

Office Hours

My office here is Room M15. I plan to be in my office on Monday afternoons before class, beginning (Amtrak willing) at about 4:00 p.m. If that time block does not work for you, just let me know and we will find a good time. My goal is to be as accessible as possible.

Class Schedule and Assignments

Monday, September 12 – Introduction; The Constitution; Congress, the President, and National Security

The Constitution: Please read the Constitution in full for the first class

Bradley & Goldsmith:

1-12

30-39 (Curtiss-Wright)

164-180 (Youngstown)

289-311 (Quirin; Eisentrager; Hamdi)

324-331

Posted on Course Website:

President Bush's Speech on September 20, 2001

President Obama's Speech on May 1, 2011

Monday, September 26 – Application of Youngstown; Role of Courts in National Security Cases; Standing; Political Question Doctrine

Bradley & Goldsmith:

180-186 (Dames & Moore)

194-204

43-63 (Raines v. Byrd; Baker v. Carr; Goldwater v. Carter)

Posted on Course Website:

Mora v. McNamara excerpts

Campbell v. Clinton excerpts

M.B.Z. v. Clinton (to be heard in Supreme Court on November 7) and El-Shifa excerpts

Monday, October 3 – Role of Congress and the President in Initiation of War

Bradley & Goldsmith:

205-264 (including Prize Cases; Little v. Barreme; Korea; Vietnam; War Powers Resolution)

Monday, October 17 – War Powers Continued; War and Individual Liberties

Bradley & Goldsmith:

244-264 redux (further discussion of this part from last class)

264-289 (Milligan; Korematsu; Endo; Pentagon Papers)

Monday, November 7 – The Bush Administration and War

Bradley & Goldsmith:

301-302 (2001 AUMF)

332-383 (Hamdan; Boumediene)

Posted on Course Website:

Iraq AUMF

President Bush's remarks in December 2005 on terrorist surveillance program

DOJ memorandum on terrorist surveillance program

Monday, November 14 – The Obama Administration: Guantanamo, Bin Laden, Libya, Drones, Targeted Killing . . .

Posted on Course Website

President Obama's Guantanamo executive order

Uthman

Maqaleh

Al-Awlaki

Harold Koh's speech excerpts

President Obama's speech excerpts

Monday, November 28 – Role of International Law in Congress, the Executive Branch, and the Courts; Treaties; Executive Agreements

Bradley & Goldsmith:

443-461 (including Foster and Medellin)

547-567 (Belmont)

569-586 (Paquete Habana, Filartiga)

644-657 (readings on Charming Betsy)

Posted on Course Website:

Al-Bihani excerpts from opinions and briefs

Monday, December 12 – Alien Tort Statute; Human Rights Litigation; States and Foreign Policy; Conclusion

The Constitution: Please re-read the Constitution in full for last class

Bradley & Goldsmith:

586-609 (Sosa)

626-644 (ATS cases)

409-428 (foreign affairs preemption)

Posted on Course Website:

Materials from Kiobel and Doe v. Exxon

Constitutional Interpretation in the Legislative and Executive Branches

Brett M. Kavanaugh

Mondays 5:45-7:45

Fall 2007

Georgetown University Law Center

Requirements:

1. Paper
2. Class participation
3. [REDACTED]

Monday, September 10 – Introduction to the Executive; Executive Privilege

The Federalist 69 and 70

United States v. Richard Nixon

Monday, September 17 – Starr/Clinton; Resolving Disputes over Executive Privileges

In re Lindsey

U.S. v. AT&T

13 Op. OLC 131

8 Op. OLC 101

Monday, September 24 – Election of the President; Presidential Immunities

Bush v. Gore

Clinton v. Jones

Nixon v. Fitzgerald

Monday, October 1 – Legislative Veto

INS v. Chadha

**Tuesday, October 9 – Appointment and Removal of Executive Officers
(note that class is on Tuesday)**

Morrison v. Olson

Edmond v. United States

Monday, October 15 – The President's Legislative Role

Clinton v. City of New York

Charles Black, Some Thoughts on the Veto

18 Op. OLC 199

17 Op. OLC 131

Curtis Bradley and Eric Posner, Presidential Signing Statements and Executive Power

Monday, October 22 – The Role of the President and Senate in Judicial Nominations

Federalist 76

Federalist 77

Dan Coats, Anatomy of a Nomination

John Cornyn, Our Broken Confirmation Process

Michael Gerhardt, The Constitutionality of the Filibuster

Monday, October 29 – Congress's Power of the Purse

Kate Stith, Congress' Power of the Purse

Monday, November 5 and 12 – National Security

8 Op. OLC 271

Public Law 93-148

Public Law 107-40

Public Law 107-243

Youngstown Sheet and Tube v. Sawyer

Hamdan v. Rumsfeld

Campbell v. Clinton

Monday, November 19 -- Impeachment

Walter Nixon v. United States

Akhil Amar, On Impeachment

Monday, November 26 – Summary; Congress

Louis Fischer, Constitutional Interpretation by Members of Congress

Monday, December 3 – Summary; Executive Branch

Jeremy Rabkin, The Role of the White House Counsel

Nelson Lund, Rational Choice at the Office of Legal Counsel

Principles to Guide the Office of Legal Counsel

Theodore Olson, Conference on Office of the Solicitor General