**FIRST AMENDMENT (Law 290.9)**

**SPRING 2020**

Course Time: Tu & Th 2:10-3:25

Location: Room 170

Professor Sarah Song

Office: 422 North Addition

Email: ssong@law.berkeley.edu

Office Hours: Thursdays 3:30-5 or by appointment

1. Assignments: The required texts for the course are Chemerinsky, *The First Amendment* (2019) and the 2019 Supplement to *Constitutional Law* (5th ed). A schedule of assignments are attached. The average assignment will be roughly 50 pages per week.

2. Course content: This course will focus on the Constitution’s protections for religion, speech, and association found under the First Amendment. The course material is divided into two units. Unit I examines the religion clauses in the First Amendment and Unit II explores freedom of speech and association.

3. Evaluation: Students will be graded on the basis of an eight-hour take-home, open-book, open-notes final exam. The exam will be comprised entirely of essay questions. Later in the semester, I will provide a copy of a past exam and discuss it with you.

4. Course method: The class will proceed with a mix of lecture and discussion. Students are expected to regularly participate. Outstanding class participation may increase a student’s grade.

5. Office hours: I will have office hours week on Thursdays after class, from 3:30 to 5:00pm. I also am available to meet by appointment

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SCHEDULE OF ASSIGNMENTS

The “Casebook” assignments can be found in Chemerinsky, *The First Amendment* (2019).

The “Supplement” assignments are in the 2019 Supplement to *Constitutional Law*.

**Unit I**

**The Religion Clauses: Free Exercise and Establishment**

Jan 14. Introduction to the class and the religion clauses

Casebook, pp. 503-513 (10 pages)

Jan 16. The free exercise clause I

Casebook, pp. 515-539 (24 pages)

Jan 21. The free exercise clause II

Supplement, pp. 223-236 (13 pages)

Jan 23. Establishment clause I: Methodology

Casebook, pp. 545-560 (15 pages)

Jan 28. Establishment clause II: Religious symbols on government property

Casebook, pp. 568-592 (24 pages)

Supplement, pp. 251-262 (11 pages)

Jan 30. Establishment clause III: When can religion become part of government activities?

Casebook, pp. 564-568 (4 pages), 592-614 (22 pages)

**Unit II**

**Freedom of Speech**

**A. Free speech methodology**

Feb 4. Why is speech constitutionally protected?; Techniques of judicial analysis I: content-neutrality

Casebook, pp. 3-38 (35 pages)

Feb 6. Techniques of judicial analysis I continued: content-neutrality

Casebook, pp. 39-52 (13 pages)

Supplement, pp. 161-177 (16 pages)

Feb 11. Techniques of judicial analysis II: vagueness and overbreadth

Casebook, pp. 52-60 (8 pages)

Supplement, pp. 177-185 (8 pages)

Feb 13. Techniques of judicial analysis III: prior restraints

Casebook, pp. 60-90 (30 pages)

Feb 18. What is an infringement of freedom of speech? I

Casebook, pp. 90-121 (31 pages)

Feb 20. What is an infringement of freedom of speech? II

Supplement, pp. 185-200 (15 pages)

**B. When Should the Government Be Able to Suppress or Regulate Speech?**

**Types of Unprotected and Less Protected Speech**

Feb 25. Incitement of illegal conduct I

Casebook, pp. 123-145 (22 pages)

Feb 27. Incitement of illegal conduct II

Casebook, pp. 145-157 (12 pages)

Mar 3. Fighting words and the hostile audience

Casebook, pp. 157-172 (15 pages)

Mar 5. The problem of racist speech

Casebook, pp. 172-184 (12 pages)

Mar 10. Sexually oriented speech I: obscenity; child pornography; protected but low-value sexual speech

Casebook, pp. 184-216 (32 pages)

Mar 12. Sexually oriented speech II: profanity and “indecent” speech; violent speech

Casebook, pp. 216-245 (29 pages)

Mar 17. Commercial speech

Casebook, pp. 245-282 (37 pages)

Mar 19. Catch-up and Q&A session

No reading required

Mar 24 and 26. No class -- spring break

Mar 31. Tort liability for speech

Casebook, pp. 283-311 (28 pages)

Apr 2. Non-verbal communication I: flag burning; spending money in political campaigns

Casebook, pp. 312-333 (21 pages)

Apr 7. Non-verbal communication II: spending money in political campaigns continued

Casebook, pp. 334-363 (29 pages)

**C. What Places Are Available for Speech?**

Apr 9. Government property and speech I: public forums, designated public forums

Casebook, pp. 365-394 (29 pages)

Apr 14. Govt property and speech II: limited public forums, nonpublic forums; private property and speech

Casebook, pp. 394-412 (18 pages)

Supplement, pp. 207-208 (1 page)

Apr 16. Speech in authoritarian environments: military, prisons, and schools

Casebook, pp. 412-445 (33 pages)

**D. Freedom of Association**

Apr 21. What is the constitutional protection for freedom of association?

Casebook, pp. 447-469

Apr 23. Concluding session