

CONSTITUTIONAL LAW: INSTITUTIONAL POWERS

Your Instructor

Professor Bethany Blackstone

Contact via Piazza

Class Meetings

Tuesdays and Thursdays

12:30 pm to 1:50 pm

Sage 356

Office Hours

Tuesdays and Thursdays,
3:30 pm to 5:00 pm

Rawlins Hall Lobby

Reserve an appointment slot
in Canvas.

Textbook

Lee Epstein and Thomas G.
Walker. 2016. *Constitutional
Law for a Changing America:
Institutional Powers and
Constraints*, 9th edition.
Washington, D.C.: CQ Press.

ISBN: 978-1-4833-8405



About the Course

This course examines the provisions of the United States Constitution that establish the powers of the federal government, place limitations on those powers, and allocate power between the federal government and the states. The decisions of the United States Supreme Court will be used as the primary means of understanding what the Constitution means both in theory and in application. In addition, the course will examine the various forces that influence the Court's interpretation of the Constitution.

There are no formal prerequisites for the course but students who lack an understanding of the primary features of American government, a basic knowledge of United States history, or a good command of the English language will find the course especially difficult. You should expect to spend 9-10 hours per week outside of class studying and reading for this course to complete the work required for an A or a B.

Course Resources

Canvas

Canvas is a learning management system (LMS) that UNT is considering adopting as an alternative to Blackboard. Some assignments will be submitted in Canvas and student grades will be posted in Canvas. Access the course Canvas page at: <http://unt.instructure.com>.

Piazza

We will use Piazza rather than email for all class-related electronic communications. Piazza is designed to get you help fast and efficiently from classmates and from me. Create an account using the link in Canvas.

REEF Polling

Students should create a REEF account in Canvas and then use REEF polling to respond to questions in class using a personal electronic device. REEF is free for all UNT students. REEF participation is not graded, but it is highly beneficial. Answering REEF questions will facilitate your ability to recall information about cases.

What You'll Learn

For each assigned case, you will be able to:

1. Discuss key constitutional issues raised by the Court.
 2. Identify and describe key operative facts relied upon by the Court.
 3. Identify and explain the key rationale used by the Court.
 4. Summarize the key holding of the case.
 5. Summarize arguments in concurring and dissenting opinions.
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For sets of related cases, you will be able to:

1. Identify and describe basic constitutional issues that may arise in hypothetical situations.
 2. Describe the key facts that justify different outcomes in similar cases.
 3. Formulate competing legal arguments and evaluate their relative merit by comparing and contrasting relevant precedents.
 4. Describe changes in the Court's jurisprudence over time.
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For sets of cases addressing different topics, you will be able to:

1. Compare and contrast historical trends in Supreme Court interpretations of different government powers and limits on those powers.
2. Describe relationships between Supreme Court interpretations of different powers.

What You'll Do

Exams

There will be 3 exams in the course. Exams will include questions that require students to remember, understand, and apply course material. Question types will include a combination of multiple choice, multiple answer, true/false, matching, and ordering questions.

Exams will be administered in the Sage Hall Testing Center located in Sage C330. The third exam is not cumulative but will be administered during the class's assigned final exam period.

Participation

For each case on the agenda for a given class day, a student will be chosen at random to respond to a series of questions about the case. Students are evaluated on the quality of their responses to these questions.

Doing well in this area of class activity will require regular attendance and preparation. If you come to class with well-prepared briefs for all cases, you should have no problem earning credit for participation.

Hypotheticals

For each unit in the course, there will be 2 hypothetical case analyses. Students are given a fact-pattern about a fictional legal dispute and use cases from to analyze the dispute. These analyses are take-home assignments and will be submitted in Canvas.

Case Briefs

Case briefs are short summaries of cases designed to highlight the most important information about the case. Preparing briefs is the absolute best way to prepare for class because discussion of each case will follow the outline of the brief template.

Several cases will be assigned for each class day. I encourage students to work in pairs or groups of three to prepare briefs. Guidelines for briefing cases will be discussed in class and are posted in Canvas.

Come to class each day with a printed brief for each assigned case. Briefs will be collected for grading at the instructor's discretion.

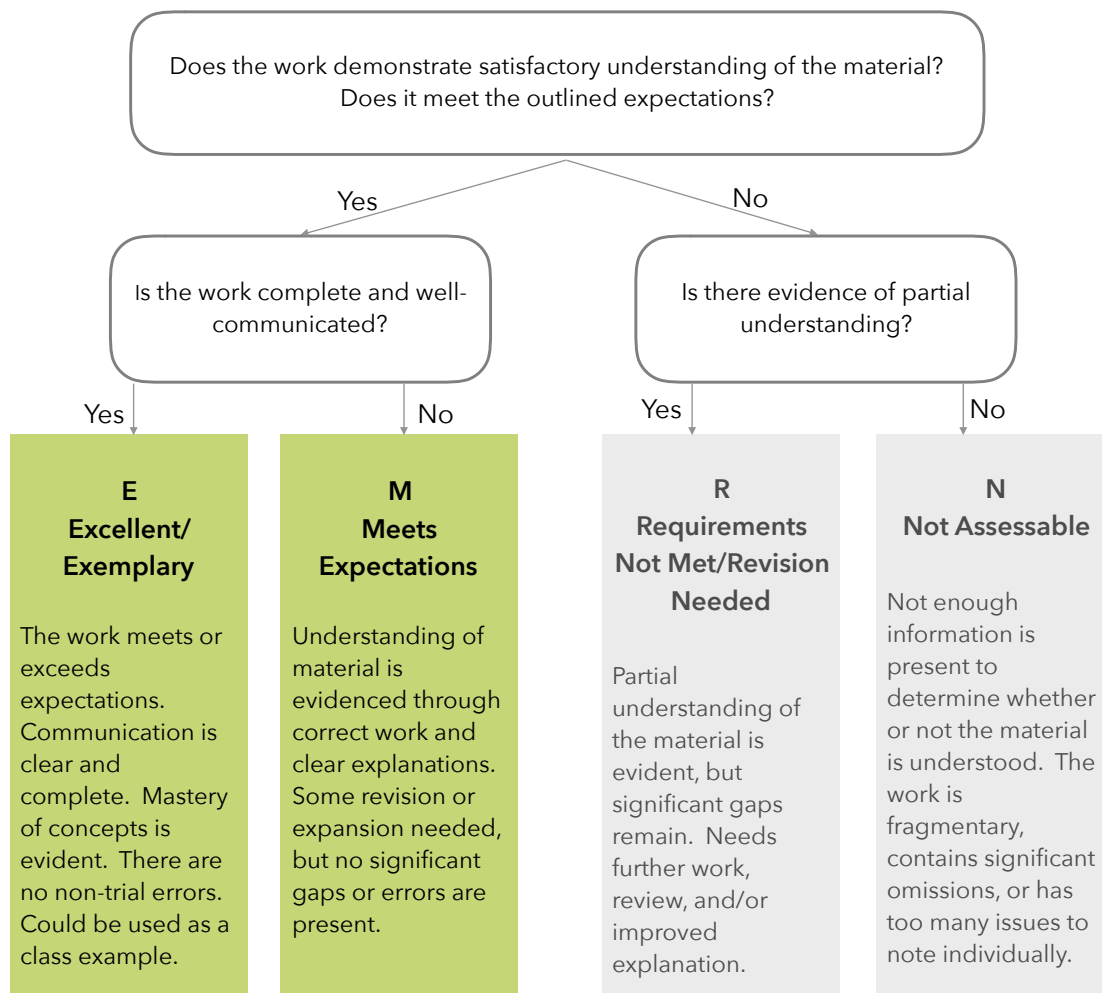
How You'll Be Evaluated

Assignment and Exam Grades

Your course grade is determined by the quality and quantity of work that you submit in the class. Your final course grade will be the only traditional letter grade (A, B, C, D, F) you receive during the semester. Assignments and exams are graded using the **EMRN rubric**. The EMRN rubric is a 4-level rubric that marks work with grades as follows:

- E: Excellent or Exemplary
- M: Meets Expectations
- R: Requirements Not Met / Revisions Needed
- N: Not Assessable

The graphic below shows how these are assigned. Work classified as **E or M is satisfactory**; work classified as **R or N will not result in credit** being awarded.



Adapted from Stutzman and Race (2004): <http://eric.ed.gov/?id=EJ717675>.

Grade Bundles & Course Grades

Your course grade will reflect the “bundles” of assignments that you satisfactorily complete. The bundle of assignments required for each letter grade is in the table below.

To earn this grade	Accomplish these things
A	Satisfactorily complete 3 Exams, with at least 2 E marks, Satisfactorily complete 3 Hypotheticals from 3 different Units, with at least 2 E marks, Satisfactorily complete 10 Case Briefs, and Satisfactorily respond to in-class questions when called on for at least 5 cases during the semester.
B	Satisfactorily complete 3 Exams, with at least 1 E mark, Satisfactorily complete 2 Hypotheticals from 2 different Units, Satisfactorily complete 7 Case Briefs, and Satisfactorily respond to in-class questions when called on for at least 3 cases during the semester.
C	Satisfactorily complete 2 Exams and Satisfactorily complete 1 Hypothetical.
D	Satisfactorily complete 2 Exams.

Tokens. Since every element of the course is assessed on an all-or-nothing basis, it might be stressful to strive for Satisfactory (E or M), given that the stakes for not meeting that threshold may be significant.

To ease the stress and build in a consistent measure of flexibility—and to maximize opportunities for learning—you will start the course with 2 virtual tokens that can be “redeemed” for some leniency or opportunities for revision. Using a token will allow you to do one of the following:

- Revise and resubmit an unsatisfactory case brief or hypothetical.

- Reattempt Exam 1 or Exam 2.

- Submit a hypothetical up to 48 hours late.

There are many advantages to this grading system.

We can **track how you're doing** without weighted averages and can more clearly see your **strengths and weaknesses**.

Your performance in class is tied to **specific learning outcomes**, not percentages.

This system provides a **mechanism for improving** unsatisfactory work.

This system **rewards mastery** instead of a “hunt for partial credit” strategy.

You will know **how much work** the letter grade you wish to achieve demands from the first day of class.

Other Policies

Americans with Disabilities Act Compliance

The University of North Texas makes reasonable academic accommodation for students with disabilities. Students seeking reasonable accommodation must first register with the Office of Disability Accommodation (ODA) to verify their eligibility. If a disability is verified, the ODA will provide you with a reasonable accommodation letter to be delivered to faculty to begin a private discussion regarding your specific needs in a course. You may request reasonable accommodation at any time, however ODA notices of reasonable accommodation should be provided as early as possible in the semester to avoid any delay in implementation. Note that students must obtain a new letter of reasonable accommodation for every semester and must meet with each faculty member prior to implementation in each class. Students are strongly encouraged to deliver letters of reasonable accommodation during faculty office hours or by appointment. Faculty members have the authority to ask students to discuss letters during their designated office hours to protect the privacy of the student. For additional information see the ODA website at <http://www.unt.edu/oda>. You may also contact them by phone at 940.565.4323.

Academic Integrity

Academic integrity is defined in the UNT Policy on Student Standards for Academic Integrity. Any suspected case of academic dishonesty will be handled in accordance with the University Policy and procedures. Possible academic penalties range from a verbal or written admonition to a grade of F in the course. Further sanctions may apply to incidents involving major violations. You

will find the policy and procedures at <http://faculty.success.unt.edu/academic-integrity>.

Classroom Conduct

Student behavior that interferes with an instructor's ability to conduct a class or other students' opportunity to learn is unacceptable and disruptive and will not be tolerated in any instructional forum at UNT. Students engaging in unacceptable behavior will be directed to leave the classroom and the instructor may refer the student to the Center for Student Rights and Responsibilities to consider whether the student's conduct violated the Code of Student Conduct. The university's expectations for student conduct apply to all instructional forums, including university and electronic classrooms, labs, discussion groups, field trips, etc. The Code of Student Conduct can be found at <https://deanofstudents.unt.edu/conduct>.

Course Schedule

Every effort will be made to adhere to the course schedule included in the syllabus but circumstances may occasionally require schedule adjustments during the semester. For example, the dates for particular topics may vary by a day or two depending on how rapidly we are able to cover material. The examination dates should be considered firm and you should plan your academic and social obligations accordingly. Due dates for case briefs may be extended (if we are covering material more slowly than the syllabus schedule), but will never be required earlier than the date listed on the syllabus.

We will adhere to the University's policy on inclement weather. Bad weather will only result in canceling class if the university is closed. Should the university close on a day when we have an examination scheduled, the exam will be held on the next class day the college is officially open.

Unit I

Topic	Date	Readings & Assignments
Introduction to the Court & to the Course	Tuesday, January 17	Read the syllabus. Review the material in the Getting Started Module in Canvas. Create your REEF and Piazza accounts.
	Thursday, January 19	Read CLCA, Part I, pages 3-46 Read Kerr, "How to Read a Legal Opinion" Read "How to Brief a Supreme Court Case."
The Judiciary	Tuesday, January 24	Read CLCA, Part II introduction, pages 49-54 Read CLCA, Chapter 2, "The Judiciary," pages 55-79 Brief <i>Marbury v. Madison</i> (1803) Brief <i>Martin v. Hunter's Lessee</i> (1816)
	Thursday, January 26	Read CLCA, Chapter 2, "The Judiciary," pages 79-120 Brief <i>Ex Parte McCordle</i> (1869) Brief <i>Baker v. Carr</i> (1962) Brief <i>Nixon v. United States</i> (1993) Brief <i>Flast v. Cohen</i> (1968) Brief <i>Hollingsworth v. Perry</i> (2013)
The Legislature	Tuesday, January 31	Read CLCA, Chapter 3, "The Legislature," pages 121-144 Brief <i>Powell v. McCormack</i> (1969) Brief <i>U.S. Term Limits v. Thornton</i> (1995) Brief <i>Gravel v. United States</i> (1972) Complete the Syllabus Quiz <u>and</u> the CLCA Part I Review quizzes in Canvas by 11:59 pm to earn one extra token.
	Thursday, February 2	Read CLCA, Chapter 3, "The Legislature," pages 144-180 Brief <i>McCulloch v. Maryland</i> (1819) Brief <i>McGrain v. Daugherty</i> (1927) Brief <i>Watkins v. United States</i> (1957) Brief <i>Barenblatt v. United States</i> (1959) Brief <i>South Carolina v. Katzenbach</i> (1966)
The Executive	Tuesday, February 7	Read CLCA, Chapter 4, "The Executive," pages 183-196 Brief <i>Bush v. Gore</i> (2000)

Topic	Date	Readings & Assignments
	Thursday, February 9	Read CLCA, Chapter 4, "The Executive," pages 196-237 Brief <i>In Re Neagle</i> (1890) Brief <i>Clinton v. New York</i> (1998) Brief <i>Morrison v. Olson</i> (1988) Brief <i>National Labor Relations Board v. Canning</i> (2014) Brief <i>Myers v. United States</i> (1926) Brief <i>Humphrey's Executor v. United States</i> (1935)
	Tuesday, February 14	Read CLCA, Chapter 4, "The Executive," pages 238-267 Brief <i>United States v. Nixon</i> (1974) Brief <i>Mississippi v. Johnson</i> (1867) Brief <i>Nixon v. Fitzgerald</i> (1982) Brief <i>Clinton v. Jones</i> (1997) Brief <i>Ex Parte Grossman</i> (1925) Brief <i>Murphy v. Ford</i> (1975) Brief <i>United States v. Curtiss-Wright Export Corp.</i> (1936)
Unit 1 Review	Thursday, February 16	
Unit 1 Exam in Sage C330	Tuesday, February 21	The exam will be administered during our regular class time.
Hypos Due	Wednesday, February 22	Unit 1 Hypotheticals due by 11:59 pm in Canvas

Unit 2

Topic	Date	Readings & Assignments
Separation of Powers in Action	Thursday, February 23	Read CLCA, Chapter 5, "The Separation of Powers in Action," pages 269-289 Brief <i>Mistretta v. United States</i> (1989) Brief <i>Immigration and Naturalization Service v. Chadha</i> (1983) Brief <i>Bowsher v. Synar</i> (1986)
	Tuesday, February 28	Read CLCA, Chapter 5, "The Separation of Powers in Action," pages 289-310 Brief <i>The Prize Cases</i> (1863) Brief <i>Ex Parte Milligan</i> (1866) Brief <i>Korematsu v. United States</i> (1944)
	Thursday, March 2	Read CLCA, Chapter 5, "The Separation of Powers in Action," pages 310-340 Brief <i>Youngstown Sheet & Tube Co. v. Sawyer</i> (1952) Brief <i>Dames & Moore v. Regan</i> (1981) Brief <i>Zivotofsky v Kerry, Secretary of State</i> (2015) Brief <i>Hamdi v. Rumsfeld</i> (2004)
Federalism	Tuesday, March 7	Read CLCA, Part III introduction, pages 343-347 Read CLCA, Chapter 6, "Federalism," pages 349-374 Brief <i>McCulloch v. Maryland</i> (1819) Brief <i>Scott v. Sandford</i> (1857) Brief <i>Coyle v. Smith</i> (1911) Brief <i>Garcia v. San Antonio Metropolitan Transit Authority</i> (1985)
	Thursday, March 9	Read CLCA, Chapter 6, "Federalism," pages 374-414 Brief <i>New York v. United States</i> (1992) Brief <i>Printz v. United States</i> (1997) Brief <i>Michigan v. Long</i> (1983) Brief <i>State of Missouri v. Holland</i> (1920) Brief <i>Crosby v. National Foreign Trade Council</i> (2000) Brief <i>Arizona v. United States</i> (2012)
Spring Break	Tuesday, March 14	
	Thursday, March 16	
Commerce Power	Tuesday, March 21	Read CLCA, Chapter 7, "The Commerce Power," pages 415-439 Brief <i>Gibbons v. Ogden</i> (1824) Brief <i>United States v. E.C. Knight Co.</i> (1895) Brief <i>Stafford v. Wallace</i> (1922) Brief <i>Champion v. Ames</i> (1903) Brief <i>Hammer v. Dagenhart</i> (1918)

Topic	Date	Readings & Assignments
	Thursday, March 23	Read CLCA, Chapter 7, "The Commerce Power," pages 439-472 Brief <i>Schechter Poultry Corp. v. United States</i> (1935) Brief <i>NLRB v. Jones & Laughlin Steel Corp.</i> (1937) Brief <i>United States v. Darby</i> (1941) Brief <i>Wickard v. Filburn</i> (1942) Brief <i>Heart of Atlanta Motel v. United States</i> (1964)
	Tuesday, March 28	Read CLCA, Chapter 7, "The Commerce Power," pages 472-500 Brief <i>Garcia v. San Antonio Metropolitan Transit Authority</i> (1985) Brief <i>United States v. Lopez</i> (1995) Brief <i>United States v. Morrison</i> (2000) Brief <i>Gonzalez v. Raich</i> (2005) Brief <i>National Federation of Independent Business v. Sebelius</i> (2012)
	Thursday, March 30	Read CLCA, Chapter 7, "The Commerce Power," pages 501-520 Brief <i>Cooley v. Board of Wardens</i> (1852) Brief <i>Southern Pacific Company v. Arizona</i> (1945) Brief <i>Hunt v. Washington State Apple Advertising Commission</i> (1977) Brief <i>Maine v. Taylor</i> (1986) Brief <i>Granholm v. Heald</i> (2005)
Unit 2 Review	Tuesday, April 4	None
Unit 2 Exam in Sage C330	Thursday, April 6	The exam will be administered during our regular class time.
Hypos Due	Friday, April 7	Unit 2 Hypotheticals due by 11:59 pm in Canvas.

Unit 3

Topic	Date	Readings & Assignments
Power to Tax & Spend	Tuesday, April 11	Read CLCA, Chapter 8, "The Power to Tax and Spend," pages 521-540 Brief <i>Pollock v. Farmers' Loan & Trust Co.</i> (1895) Brief <i>United States v. United States Shoe Corp.</i> (1998) Brief <i>South Carolina v. Baker</i> (1988) Brief <i>Davis v. Michigan Department of Treasury</i> (1989)
	Thursday, April 13	Read CLCA, Chapter 8, "The Power to Tax and Spend," pages 540-557 Brief <i>McCray v. United States</i> (1904) Brief <i>Bailey v. Drexel Furniture Co.</i> (1922) Brief <i>United States v. Butler</i> (1936) Brief <i>Steward Machine Co. v. Davis</i> (1937)
	Tuesday, April 18	Read CLCA, Chapter 8, "The Power to Tax and Spend," pages 557-583 Brief <i>South Dakota v. Dole</i> (1987) Brief <i>National Federation of Independent Business v. Sebelius</i> (2012) Brief <i>Michelin Tire Corp. v. Wages</i> (1976) Brief <i>Complete Auto Transit v. Brady</i> (1977) Brief <i>Quill Corp. v. North Dakota</i> (1992) Brief <i>Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon</i> (1994)
Contract Clause	Thursday, April 20	Read CLCA, Part IV introduction, pages 587-589 Read CLCA, Chapter 9, "The Contract Clause," pages 591-623 Brief <i>Fletcher v. Peck</i> (1810) Brief <i>Trustees of Dartmouth College v. Woodward</i> (1819) Brief <i>Proprietors of Charles River Bridge v. Proprietors of Warren Bridge</i> (1837) Brief <i>Stone v. Mississippi</i> (1880) Brief <i>Home Building & Loan Association v. Blaisdell</i> (1937) Brief <i>United States Trust Co. v. New Jersey</i> (1977) Brief <i>Allied Structural Steel Co. v. Spannaus</i> (1978)

Topic	Date	Readings & Assignments
Substantive Due Process	Tuesday, April 25	Read CLCA, Chapter 10, "Economic Substantive Due Process," pages 625-658 Brief <i>The Slaughterhouse Cases</i> (1873) Brief <i>Munn v. Illinois</i> (1877) Brief <i>Allgeyer v. Louisiana</i> (1897) Brief <i>Lochner v. New York</i> (1905) Brief <i>Muller v. Oregon</i> (1908) Brief <i>Adkins v. Children's Hospital</i> (1923)
	Thursday, April 27	Read CLCA, Chapter 10, "Economic Substantive Due Process," pages 658-681 Brief <i>Nebbia v. New York</i> (1934) Brief <i>West Coast Hotel v. Parrish</i> (1937) Brief <i>Williamson v. Lee Optical</i> (1955) Brief <i>BMW of North America v. Gore</i> (1996) Brief <i>Caperton v. A.T. Massey Coal Co.</i> (2009)
Takings Clause	Tuesday, May 2	Read CLCA, Chapter 11, "The Takings Clause," pages 683-719 Brief <i>United States v. Causby</i> (1946) Brief <i>Penn Central Transportation Company v. City of New York</i> (1978) Brief <i>Nollan v California Coastal Council</i> (1987) Brief <i>Lucas v. South Carolina Coastal Commission</i> (1992) Brief <i>Horne v. Department of Agriculture</i> (2015) Brief <i>Berman v. Parker</i> (1954) Brief <i>Hawaii Housing Authority v. Midkiff</i> (1984) Brief <i>Kelo v. City of New London</i> (2005)
Unit 3 Review	Thursday, May 4	None
Hypos Due	Monday, May 8	Unit 3 Hypotheticals due by 11:59 pm in Canvas.
Unit 3 Exam in Sage C330	Thursday, May 11 10:30 am-12:30 pm	The exam will be administered during our class's assigned final exam period.

PLANNING FOR SUCCESS

<p>To earn an A or a B, plan to spend about</p> <p>10</p> <p>hours per week on 4200 work outside of class</p>	<p>On average, you will read</p> <p>60</p> <p>pages each week</p>	<p>On average, you will brief</p> <p>9</p> <p>cases each week</p>
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Remember these dates.

Tuesday, February 21	Unit 1 Exam in Sage 330C
Wednesday, February 22	Unit 1 Hypotheticals due by 11:59 pm in Canvas
Thursday, April 6	Unit 2 Exam in Sage 330C
Friday, April 7	Unit 2 Hypotheticals due by 11:59 pm in Canvas
Monday, May 8	Unit 3 Hypotheticals due by 11:59 pm in Canvas
Thursday, May 11	Unit 3 Exam at 10:30 am in Sage 330C

Ask for help.

If you need help, contact me via Piazza or see me during office hours. I want you to succeed in this course and to enjoy learning about constitutional law. If you are having difficulty with the material, let me know so we can ensure that you get the most out of the time and effort you put in to the course!

Make it Stick.

You will be introduced to *a lot* of new material in this course and you will need to remember key case information to participate in class discussion and to analyze related cases. Recent research on the science of learning and memory suggests that the following practices facilitate durable learning.

1. *Test Yourself Early and Often*

The more you practice retrieving newly-learned information from your brain, the easier it will be to recall it when you want to later. Creating flashcards is a great way to test yourself, but don't wait until the week before the exam!

2. *Mix It Up*

Shift your study back and forth between topics instead of studying topics one at a time. If you're using flashcards, add new content to your collection of cards as we cover it in class and mix them up when you study.

If you want to learn more about learning, check out Brown, Roediger, and McDaniel's 2014 book *Make it Stick: The Science of Successful Learning*.