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Constitutional Law I
Hofstra University School of Law
Spring 2018
Professor Julian Ku

I. ADMINISTRATIVE MATTERS

a. Readings

Reading assignments are from Choper, Fallon, Kamisar, & Shiffrin, Constitutional Law (12th ed. 2015), and from supplemental materials I will distribute from time to time.

These texts will be supplemented by materials I link to on the TWEN site. Please check the TWEN site regularly for course assignments and updates.

CB	Choper, Fallon, Kamisar, & Shiffrin, Constitutional Law (12th ed. 2015)
CONST	U.S. Constitution

Recommended Readings

BARNETT	Randy Barnett, Our Republican Constitution (2016).
AMAR	Akhil Amar, America's Constitution: A Biography (2005)

b. Learning Objectives

By the end of this course, students should have:

- Acquired knowledge of the basic legal doctrines undergirding the analysis of U.S. constitutional law including judicial review, the doctrine of enumerated powers, the commerce clause, presidential powers, separation of powers, and federalism.
- Developed an understanding of different theories of constitutional interpretation
- Developed an understanding and appreciation of the relationship between law and politics in the interpretation of the US. Constitution.
- Acquired an understanding of the practical impact of constitutional law on government policy and legal practice.

c. Grading

The grade for this course is based on a **closed-book exam** at the end of the semester.

The exam will comprise **90 percent** of your grade.

Class participation will comprise **10 percent** of your grade.

FOR THE SPRING 2018 SEMESTER, I will use a Panel system with 12 students assigned each week to be primary class discussants. Each Panel will be assigned various class dates during the semester. Panel assignments and dates will be posted on the CANVAS site.

d. Class Attendance

Attendance & Lateness:

You are expected to arrive on time and prepared for each class.

Moreover, the rules of the New York State Court of Appeals and the American Bar Association require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of the regularly-scheduled classes in this course. **Thus, you may miss no more than two classes in this three-credit class.**

I will provide dated sign-in sheets for each regularly-scheduled class. **Your signature (or lack thereof) on these sheets shall presumptively determine your attendance at (or absence from) any given class**. Each student is individually responsible for signing the attendance sheet in. Falsification of sign-in sheets (by, for example, signing another student's name) is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by not attending class, or by failing to sign in, you will be administratively withdrawn from the course. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

The Office of Student Affairs has authority to excuse class absences for religious reasons and in cases of truly compelling hardship. If you wish to claim a particular absence as excused, and thus not counted against your maximum number of allowable absences, you must take that issue up with the Office of Student Affairs – NOT with me or my secretary. **I shall mark an absence as excused if and only if I receive a note or email from the Office of Student Affairs to that effect.**

e. Class Participation and Professionalism

Class participation is both encouraged and expected. As law students studying to become professionals, you should conduct yourselves in a manner that shows respect for others, respect for the study of law, and respect for your own pursuit of a legal career.

Attend class on time. As professionals, lawyers who are late for court dates, or late for important meetings, demonstrate disrespect for the court, their clients, or their colleagues. You show similar disrespect for your class, your instructor, and your classmates when you attend class late. Certainly, Long Island residents must face traffic and parking difficulties, but you should allow for these contingencies when coming to class.

During class, you should not leave the classroom while class is in session except in unusual situations. Given the setup of our classroom, it is highly distracting when students walk in or out of the classroom. Obviously, there will be times when a health issue requires you to step out of class, but such occasions should be rare.

The American Bar Association requires that you spend at least 6 hours per week, on average, outside of class studying for this 3-credit course. This is in addition to the three hours a week we spend in class.

Each week,

f. <u>Lexis Nexis and the Use of Computers</u>

You will be required to register on the Lexis Nexis CANVAS site for this class with an email address that you check regularly. **All written assignments** must be turned in via the CANVAS site. Additionally, I will occasionally post discussion questions on the CANVAS site. Participation in discussions on the CANVAS site will also count toward your class participation grade.

Although you are welcome to use computers outside of class, **you will NOT be permitted to use laptop computers or smartphones during class, whether it is to take notes or to conduct any other kind of computer activity during class.**

I will generally post Powerpoint slides under the Files tab on the CANVAS site immediately AFTER each class.

g. <u>Office Hours</u>

I am available for meetings in my office for this class from 11:00 -12:00 p.m. on Thursdays.

During my office hours, I will meet with students on a first-come, first-served basis.

I encourage you to take full advantage of my office hours. And please do not feel as though you need to limit the subject of our meetings to class matters *per se* -- I would be happy to discuss with you more general law school concerns, career questions, or anything else that would be appropriate.

In the event that it is not possible for you to meet with me during my regularly-scheduled office hours, please let me know (preferably via email) and we can arrange to meet at another time that works for both of us.

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II. COURSE PLAN

This course is concerned with the legal issues, doctrines, and interpretative theory of the Constitution of the United States. Specifically, this semester will focus on the Constitution's allocations of governmental powers between the different branches of the federal government and the state governments.

We will normally cover **one** assignment per day. I have no doubt, however, that we will have to adjust the schedule of assignments and that this syllabus will change as the semester progresses. I will do my best to announce any adjustments or variations in the reading assignments ahead of time. Still, I recommend staying one assignment ahead of the class schedule just to be safe.

Please read **ALL** of the materials assigned, including notes and problems before and after the cases, distributed materials, and all **constitutional** provisions, which can be found in the text and also in the supplement I posted on TWEN. The **constitutional provisions** are just as important as the cases and will be the subject of classroom discussion.

I. Introduction

1. CONST: Preamble, Articles I-III, V; DM: "A More Perfect Union: The Creation of the Constitution"; BARNETT: Introduction ,1-30; AMAR: Chp 1, 3-55..

II. The Federal Judiciary and Judicial Review

2. The Federal Judiciary and the Origins of Judicial Review: CB 1-18; Art. III, s. 1-2; Art. VI, cl. 2-3. AMAR: Chp. 6: pp 205-247; BARNETT: 62-85.
3. The Debate Over Judicial Review: CB 18-32
4. Limitations on Judicial Review – Political Questions: CB 32-50.
5. Limitations on Judicial Review – Congressional Regulation of Judicial Power: CB 50-71; Art. III, s. 1; Art. I, s. 8, cl. 9, s. 9, cl 2.
6. Limitations on Judicial Review – Standing: CB 1760-1775; CONST Art. III, s. 1.

III. Congress and its Powers

7. Sources and Nature of Congressional Power: CB 71-83; CONST Art. I, s. 1, 8, cl. 18; Amdt X; AMAR: Chp. 3; BARNETT: Chp. 167-185.
8. Introduction and Background of the Commerce Power: CB 83-91; Art. I, s. 8, cl. 3; Amdt X. BARNETT: Chp. 185-203
9. Limitations on the Commerce Power through 1936 CB 91-98.
10. Expansion of the Commerce Power CB 98-110
11. New Limitations on the Commerce Power CB 110-139
12. The Taxing and Spending Clause: CB 139-160; Art. I, s. 8, cl. 1.

13. State Immunity from Federal Regulation: CB 168-185
14. The Foreign Affairs Power: CB 160-164; DM: Fong Yue Ting v. U.S. (Posted under Course Materials tab on TWEN); Art. I, s. 8, cl. 10-16, s. 10.

III. Executive Powers

15. Executive Powers: CB 187-202; CONST: Art. II, s. 1, cl. 1, 7. AMAR: 175-205; BARNETT: 203-222.
16. Executive Powers: Foreign Affairs and War: CB 202-214; CONST: Art. II, s. 2, cl. 1-3.
17. Delegated Powers: CB 229-234: DM: ALA Schechter Poultry v. U.S. (Posted under Course Materials tab on TWEN)
18. Legislative and Line Item Vetoes CB 234-245.
19. Appointment and Removal of Officers: CB 245-262; CONST: Art. II, s. 2, cl. 2.
20. Executive Privilege and Immunities CB 262-275.

V. Substantive Protection of Individual Rights

21. The Rise of Substantive Due Process CB 361-376, CONST. Amdt. V, XIV, s. 1. AMAR: 349-403.
22. The Lochner Era CB 376-385.
23. The Abandonment of Lochner CB 387-397
24. Takings and Regulation CB 399-411.