Constitutional Law II  
Hofstra University School of Law  
Fall 2018  
Professor Julian Ku

This course is concerned with the legal issues, doctrines, and interpretations of the Constitution of the United States. Specifically, this semester will focus on some of the rights protected by the Constitution, the doctrines associated with those rights, and the problems raised by those doctrines.

I. Overview

a. 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 related to the protection of individual rights.
- Developed a further 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.

b. Grading

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

The exam will comprise most of your grade, but class participation can affect the grade of students whose grades are on the margins.
c. **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**If you exceed the permitted absences by not attending class, or by failing to sign in, you will be administratively withdrawn from the course.** Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation.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.**

d. **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.

e. **TWEN and the Use of Computers**

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

You are welcome to use your computer in the classroom. I will generally post Powerpoint slides under the “Course Materials” tab on the TWEN site immediately prior to class. However, you should **not** use your computer to answer email, instant message, play games, etc. Not are such activities disrespectful and distracting to your classmates, but it is also usually very obvious to the instructor.

f. **Office Hours**

I am available for meetings in my office from 1:30-2:30 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.

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. Background:

   US Const. Amdts I-X, XIII-XV; DM 1-8;
   
   Who is Protected? The Scope of Constitutional Rights DM 9-21 (Reid v. Covert; Plyler v. Doe)

   RECOMMENDED BUT NOT REQUIRED: BARNETT: Introduction:85-113;
   AMAR: Chp 9-10, 313-403.

2. Against Whom or What Does the Constitution Protect? The Concept of State Action: CB 1645-1683

II. Substantive Due Process

4. Substantive Due Process – The Right of “Privacy” and “Autonomy” CB 427-444
5. Substantive Due Process – Abortion and Stare Decisis CB 444-460; 468-491
6. Substantive Due Process - Tradition and History CB 510-536

III. The Right to Keep and Bear Arms

8. The Right to Keep and Bear Arms CB 575-595

IV. Procedural Due Process

9. Procedural Due Process CB 620-636

V. Equal Protection
10. Traditional Equal Protection  CB 1331-1351
11. Race & Ethnic Ancestry CB 1351-1393
12. DeJure/ DeFacto Discrimination CB 1411-1432
13. Benign/Remedial Discrimination CB 1432-1476
14. Gender  CB 1476-1506
15. Other Classifications: CB 1513-51
16. Fundamental Rights CB 1551-1558; 1606-1621

VI. Free Expression

17. Introduction – Advocacy of Illegal Action  CB 637-653; 665-688
18. Libel, CB 688-724
19. Fighting Words and Hate Speech CB 775-788: 928-952
20. Obscenity CB 750-771
21. New Categories of Prohibited Speech CB 788-815

VII. Religion

22. Establishment Clause – CB 1207-1230
23. Official Acknowledgement CB 1248-1282
24. Free Exercise Clause – CB 1282-1306