

Last modified on 1/2/2019

**Constitutional Law I**  
Hofstra University School of Law  
Spring 2019  
*Professor Julian Ku*

**I. ADMINISTRATIVE MATTERS**

**a. Readings**

Reading assignments are from Choper, Fallon, Kamisar, & Shiffrin, Constitutional Law (12<sup>th</sup> 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.

**Last modified on 1/2/2019**

The exam will comprise **95 percent** of your grade.

**Class participation** will count as **5%** of your grade.

FOR THE SPRING 2019 SEMESTER, I will use a Panel system with 15 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 **TWEN** site prior to the first day of class.

**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. Credit Hour Policy**

The Law School has adopted a "Credit Hour Policy." A "credit hour" is an amount of work that reasonably approximates not less than one hour of classroom or direct faculty instruction (calculated as 50 minutes of classroom time) and two hours (120 minutes) of

**Last modified on 1/2/2019**

out-of-class student work per week for fifteen weeks (including one week for final exams), or the equivalent amount of work over a different amount of time. These requirements apply equally to all courses taught in the Law School, including distance education courses.

This policy 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.

**f. 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.

**g. 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.

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 UNLESS I SPECIFICALLY ASK YOU TO BRING DEVICES THAT DAY.**

I will generally post Powerpoint slides under the COURSE MATERIALS tab on the TWEN site immediately AFTER each class.

**h. Office Hours**

I am available for meetings in my office for this class from 1:00 -2:00 p.m. on Wednesdays. Please contact my assistant, Maria Filotti ([maria.filotti@hofstra.edu](mailto:maria.filotti@hofstra.edu)), to make an appointment during that time.

**Last modified on 1/2/2019**

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 Ms. Filotti know and we can try to 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. 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. Dormant Commerce Clause: CB 275-296
13. The Taxing and Spending Clause: CB 139-160; Art. I, s. 8, cl. 1.
14. State Immunity from Federal Regulation: CB 168-185
15. The Foreign Affairs Power: CB 160-164; DM: Fong Yue Ting v. U.S. (Posted under Course Materials on TWEN); Art. I, s. 8, cl. 10-16, s. 10.

### **III. Executive Powers**

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

### **V. Substantive Protection of Individual Rights**

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